Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDALE HOUSING and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlord to comply with section 28 of the Act, pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $6,000.00, representing one year's rent as compensation for her loss of quiet enjoyment, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Amendment of Claim

In a letter to the Residential Tenancy Branch included in her evidence package, the tenant sought to increase the amount of her claim from $6,000.00 to $11,400.00. The tenant stated she was claiming this additional amount because, upon review of her records after she filed the application for dispute resolution, the loss of quiet enjoyment of the rental unit (the basis for her claim) started a year earlier than she previously thought. Accordingly, she seeks compensation of the return of an additional year's rent (that is, $5,400.00).

Rule of Procedure 4.1, in part, states:

> **4.1 Amending an Application for Dispute Resolution**
>
> An applicant may amend a claim by:
>
> - completing an Amendment to an Application for Dispute Resolution form; and
> - filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.
>
> An amendment may add to, alter or remove claims made in the original application.

The tenant did not complete or file such a form. Additionally, I find that the tenant's circumstances do not warrant my amending her claim at the hearing, as per Rule 4.2 (which allows for amendments to be made at the hearing), as the amount of the tenant's claim did not increase since the claim was made by virtue of the passing of time. Rather the tenant seeks to increase the amount of her claim due to an oversight on her part.

Accordingly, I find that it would not be appropriate to permit the claim to be amended in such circumstances. I therefore decline to make any order amending the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to:

- an order requiring the landlord to comply with section 28 of the Act; and
- a monetary order for compensation for damage or loss under the Act in the amount of $6,000.00?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 1, 2013. Monthly rent is $1,300.00 and is payable on the first of each month. The tenant testified that her rent is subsidized by the provincial government, and she pays $474.00 of the monthly

rent herself. The tenant paid the landlord a security deposit of $450.00. The landlord still retains this deposit.

The tenant lives in the rental unit with her daughter, who attends high school. The tenant is visually impaired, and is not employed.

The rental unit is a townhouse which shares a wall with two other rental units (units 8 and 10). These units are part of a larger complex (the "**rental property**"). Prior to moving into the rental unit in 2013, the tenant resided in a different unit in the rental property. She moved from that unit due to noise issues she had with an adjoining tenant.

The landlord's agent testified that the rental unit was built in 1992 and is wood framed.

From 2013 to 2016, the tenant resided in the rental unit, and did not make any noise complaints to the landlord. However, in August 2016, new tenants moved into unit 10. These tenants have four sons (at the time of move-in, a 19 year-old, a 3 year-old, and twins 1 year-olds). The tenant testified that shortly after moving in, the tenants in unit 10 began creating a significant amount of noise on a daily basis.

The tenant testified that the noise was "constant" and consisted of screaming, crying, banging on walls, and sounds of children running up and down stairs, jumping on beds, and bouncing off walls.

She testified that the noise starts anywhere between 6 a.m. to 8 a.m., and continues until the unit 10 neighbors leave for work or school. She testified that the noise resumes when the unit 10 neighbors return from work or school. She testified that the noise continues to 10 p.m. or 11 p.m., but rarely past then.

On weekends, the tenant testified that the noise continues throughout the day.

She testified that, to date, the noise continues in both volume and frequency.

She testified that the noise causes her to be unable to sleep properly, practice yoga, or enjoy a quiet sit on the couch. She testified that her daughter suffers from sleep loss and anxiety as the result of the noise.

The tenant's daughter gave evidence as well. She testified that she has experienced the noise for the past three years. She testified that the noise makes it difficult for her to

have peace and quiet at home. She often turns her music up very loud to block out the screaming and crying she hears. She testified she does not sleep properly due to the noise and that it has given her anxiety, and that this negatively affects her performance at school. She testified that she has fallen asleep in class, and that the noise makes it difficult to do her homework.

The tenant's daughter testified that some nights the noise is so bad that she spends the night at her grandparents' house (who live close by) to get a proper sleep. She estimates she does this once or twice a week. She testified that her mother stays at the rental unit on these nights.

The tenant also entered two letters from third-parties to corroborate her claims about the noise.

The first letter, in part, states:

> I am over at [the rental unit] throughout the week and weekends during the day and evenings. It's hard to understand how people can be so disrespectful. I know she has been in contact a little with the management and nothing seems to get done.
>
> I am a father of two and I have not ever heard people so noisy as I have visiting her.
>
> The noises are like huge bangs and stomping it sounds like running into walls and stomping around slamming doors and all out no quiet.
>
> It all vibrates to her house and this can be all day and evening when they are home.
>
> There is no one certain time but between four and 11 seems to be when all hell breaks loose.

The second letter, in part, states:

> I go over to [the rental unit] a few times a week at different hours of the day and evening and I got to tell you I don't know how she does it the people next-door are very loud, they bang on the walls and I don't even know how to describe it to the noise is very overwhelming to say the least.

> With all the stress that she goes through with this it's even hard to sit and have a conversation without the disturbance of the neighbors.
>
> The dang vibrates the walls and I have even seen a picture fall off her wall.

The tenant testified that she has contacted the landlord on numerous occasions complaining of the noise caused by unit 10 neighbors over the last three years. She submitted into evidence a large number of email and written correspondence she sent from 2016 to 2019, complaining of the noise issues.

The tenant testified that, in the three years she has been complaining, the landlord has sent seven letters to the unit 10 occupants. She believes that this is too few, and believes that the landlord ought to do more.

She testified that on more than one occasion, an agent of the landlord attended the rental unit to listen for noise, but that they could not hear any. The landlord's agent agreed with this, and referenced a written statement from the wife of the complex manager (who also lives in the rental property) in their evidentiary materials confirming this.

The tenant testified that both she and her daughter have made recordings of the noise. She testified that she has not shared these recordings with the landlord (nor were these recordings submitted into evidence).

The landlord entered letters from the unit 10 neighbours into evidence, in which they denied that they were causing unreasonable noise. In one of these letters (undated) the unit 10 neighbour wrote:

> [the tenant] is always sticking notes on #8's door that her kids are too loud too. There must be something wrong with her. If she is extremely sensitive to noise, oh well that's too bad.

The tenant claims that this shows that the unit 10 neighbours do not take her complaints seriously, and are not interested in changing their behaviour to provide her with the quiet enjoyment she is entitled to. She added that her complaints to the landlord have been primarily with unit 10, and not unit 8.

The landlord's agent testified that the landlord takes the complaints of the tenant very seriously, but, as of yet, have been unable to confirm that the noise actually occurs, as the times when agents of the landlord attend the rental unit, they hear nothing. Nevertheless, the landlord's agent testified that she has worked with the unit 10 neighbours to try to minimize the noise. They have moved furniture up against the shared wall between unit 10 and the rental unit, so as to prevent children from banging on the wall, and have relocated the younger children into a bedroom that does not share a wall with the rental unit.

The landlord entered a letter dated February 1, 2019 into evidence in which it wrote:

> Your neighbours are asking [the landlord] to investigate the matter thoroughly. We never witnessed the alleged noise. Without observing the noise, it is impossible to for us to determine who is right, and who is wrong.

In this letter the landlord suggested a meeting between the tenant, the landlord and the unit 8 and 10 neighbours with the aim to determine what activities of undertaken by the neighbours caused the noise complained on. The tenant declined attending such a meeting. She advised an agent of the landlord that she would rather wait to see the outcome of this hearing.

The landlord's agent testified that she offered to relocate the tenant to another rental property, but the tenant refused on the basis that the proposed options were too far away (she currently lives very close to her parents, and close to her daughter's high school).

The landlord's agent testified that she does not have any rental units available that would be suitable for the unit 10 neighbours to move to.

Analysis

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Applied to this case, the tenant bears the onus to prove that noise occurred at the volume and frequency she alleges.

In support of her allegation, she has provided:

1) her own oral testimony;
2) oral testimony of her daughter;
3) two letters from first-hand witnesses of the noise; and
4) numerous pieces of contemporaneous correspondence to the landlord complaining about the noise over a span of almost three years.

The landlord, in contrast, submitted provided:

1) oral evidence of her the landlord's agent, who did not observe any of the alleged noise;
2) written statements from the unit 10 neighbours;
3) written statements from other of the landlord's agents; and
4) numerous pieces of correspondence to the tenant and the unit 10 neighbours regarding their efforts to resolve this matter.

In determining if the noise is occurring as alleged by the tenant, I place little weight on the written statements of the landlord's agents in which they state they attended the rental unit and heard no noise coming from unit 10. While I accept that this may be true, this is not proof that the noise itself is not occurring. It is only proof that it did not occur when the landlord's agents were present.

I have considered the written statements of the unit 10 neighbours. I find the unit 10 neighbour's comments placing blame on the tenant for these complaints to be unsubstantiated, and I agree with the tenant that these are indicative that the unit 10 neighbours are not taking the tenants complaints seriously.

I find the uncontroverted testimony of the tenant's daughter to be particularly compelling. I do not think it likely that she would spend one to two nights a week at her grandparents if there was no (or insignificant) noise causing her disturbance.

Likewise, I find the written statements from the tenant's third party witnesses to corroborate the tenant's and the tenant's daughter's testimony.

Furthermore, I find the fact that the tenant did not make any noise complaints when unit 10 was occupied by different tenants, and then consistently made noise complaints for over two years regarding noise coming from unit 10 to be compelling evidence that noise is, in fact, being caused by the unit 10 neighbours.

I find that if the tenant had an unusual sensitivity to noise (as suggested by the unit 10 neighbours in their letter), then it would have been likely that the tenant would have complained about the noise prior to the unit 10 occupants moving in.

In summation, I find that the noise alleged by the tenant did occur, and that it was of an unreasonable level.

Section 28 of the Act states:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (b)freedom from unreasonable disturbance;

Policy Guide 6 states:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
>
> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

On the evidence presented, I find that the noise caused by the unit 10 neighbours constitutes an unreasonable disturbance, and deprived the tenant of her right to quiet enjoyment of the rental unit.

In assessing what damages flow from this breach, I must apply Residential Tenancy Policy Guideline 16, which sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have already found that the Act has been breached. I find that the tenant suffered damage as the result of this breach.

I find, however, that the tenant did not take reasonable steps to minimize the damage that she suffered.

In the landlord's agent's testimony, and in the landlord's documentary evidence, it is clear that they had difficultly confirming that the noise alleged by the tenant was actually occurring (they wrote as much in their letter dated February 1, 2019). As such, they cannot reasonably be expected to take every step available to them to provide the tenant with quiet enjoyment.

The tenant had in her possession audio recordings of the noise alleged, that would have provided corroboration to her allegations. She did not, however, provide these recordings to the landlord. In such circumstances, I find that the tenant bears partial responsibility for the loss of quiet enjoyment caused by the noise lasting as long as it did. It is reasonable to think that if the landlord could confirm that the noise was coming from unit 10, despite the steps the unit 10 neighbours took to minimize the noise (e.g. moving their children's rooms and rearranging furniture), that the landlord might have acted in a more decisive manner against the unit 10 neighbours. In the absence of any corroboration of the tenant's complaints, I find that the landlord acted reasonably.

As such, I find that the tenant is not entitled to her damages as claimed in her application. I do, however, find that she is entitled to nominal damages. Per Policy Guideline 16:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In light of the continuing noise, the tenant's loss of quiet enjoyment, and the efforts she did take to report these noises to the landlord, I order find that the tenant is entitled to damages in the amount of her contribution to one month's rent ($474.00).

Pursuant to section 72(2), I order that the tenant may withhold her portion of the next month's rent in satisfaction of this award of nominal damages.

I have made a determination that the noise alleged by the tenant has occurred. Prior to this decision, the landlord has had some doubt as to whether this was the case. This decision should dispel that doubt. I order that the landlord comply with section 28 of the Act, and provide the tenant with the quiet enjoyment of the rent unit that she is entitled to. I am not empowered by the Act to order that the landlord take any specific steps in providing quiet enjoyment to the tenant, but I would encourage the landlord to contact the Information Services department of the Residential Tenancy Branch to discuss all options available to it under the Act.

I order that the tenant take all reasonable steps to cooperate with the landlord in its efforts to provide her with quiet enjoyment. This includes, but is not limited to:

1) attending a meeting with the unit 10 neighbours, the landlord, and herself, where the parties can determine what the activities taken by the unit 10 neighbours cause the noise complained of by the tenant;
2) granting the landlord access to the rental unit, as reasonably required.

Conclusion

Pursuant to section 72(2) of the Act, I order that the tenant may withhold $474.00 from the next month's rent payable to the landlord, in satisfaction of the above-mentioned award for nominal damages.

Pursuant to section 62(3) of the Act, I order that the landlord comply with section 28 of the Act and provide the tenant with quiet enjoyment of the rental unit.

Pursuant to section 62(3) of the Act, I order that the tenant take all reasonable steps to cooperate with the landlord in its efforts to provide her with quiet enjoyment of the rental unit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2019

Residential Tenancy Branch