



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenants applied for an order directing the Landlord to comply with the Act and regulation regarding their right to quiet enjoyment of the rental unit, and to recover the cost of their filing fee.

The Tenants, K.C. and C.H., and two agents for the Landlord, Z.B. and E.M. (the "Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Agents were given the opportunity to provide their affirmed evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution and/or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party, and had sufficient time to review it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

In the hearing, the Tenant referred to the need for repairs in the rental unit; however, since they had not applied for such repairs, I advised that they would have to make a separate application, as the Landlord had no notice of this matter ahead of today's hearing.

During the hearing, the Agent volunteered they would ensure the repairs were completed in a timely fashion, although this remains a matter outside of my considerations in this decision.

Issue(s) to be Decided

- Are the Tenants entitled to an order requiring the Landlord to comply with the Act, Regulation and/or tenancy agreement?
- Are the Tenants entitled to recovery of the cost of the filing fee for this Application?

Background and Evidence

The Parties agreed that the tenancy began on December 1, 2018, with a monthly rent of \$2,250.00, due on the first of each month, a security deposit of \$1,125.00, and no pet damage deposit. The Parties agreed that the rental unit is a two-bedroom, two-bathroom apartment in a wood-frame building that is approximately 40 years old.

The Tenants explained that they have felt harassed by the tenants in the apartment below them (the "Other Tenants"), since they moved in on December 2, 2018. They said the Other Tenants complain about noise, and bang on the ceiling to the point that the Tenants' two-year old daughter will not sleep in her bedroom anymore, "because she is afraid of the monster downstairs". The Tenants said they have to take their daughter to a doctor about this fear.

The Tenants submitted a list of 24 incidents they have experienced between December 1, 2018, and March 8, 2019, which include complaints from the Other Tenants, banging on the ceiling below the children's bedroom, and complaints from the Other Tenants conveyed by the Agents.

The Agents said the Other Tenants "...are expecting too much. When you're living in a multi-family building and the tenants above you have a 2-year old, a 5-year old, and a baby, and they have put carpets down, we don't believe that there's anything [the Tenants] are doing unreasonably. We defended them in another hearing with the [Other Tenants]".

The Agents said they have talked to all of the neighbours around the Tenants' rental unit and that no one else has heard any noise from the Tenants' apartment, other than the Other Tenants below.

The Tenant, C.H. said:

Since we moved here to this building the very first day, we were just moving furniture and they came upstairs to complain about the noise at 3 o'clock in the afternoon. We just moved in. I said we are moving the furniture. I was shocked.

I make sure that nobody hears a noise. The people next door were absolutely shocked to know that we have three kids. The person right in front has heard nothing. They've never heard anything. We tried to do everything under the sky. My daughter has school for 5 days; on Saturday they go to church, and they go to dance class and Portuguese lessons. They are gone most of the time. They don't stay here much. Of course [the Other Tenants] have to complain about everything.

As much as we do to be quiet, they say 'no you were breathing...', but I'm very happy to say that we will continue doing what we do, not because of them, but because of who we are. We never got a complaint anywhere we lived before. It's because we are the type of people we are; we are not here to make problems.

We feel very fortunate that [the Agent] gave us the unit, because a lot of places don't allow kids. We have to make sure every body's comfortable. We live thinking about people upstairs, downstairs, left, right. But anybody who's a parent is going to realize that they don't want their kids bouncing off the walls and running everywhere for our own peace of mind.

The Agent said:

[The Other Tenants] might move to a different unit. We apologize to [the Tenants] if they feel harassed. If [the Other Tenants] don't want to transfer and this

continues, we can offer [the Tenants] somewhere else to move, but if they're not doing anything wrong, they shouldn't have to. We are going to have to deal with this in a different way. We can't be forced into bothering the Tenants because of the [Other Tenants].

I would like to start on a fresh step. Don't feel any animosity toward [the Other Tenants]. Let's be the bigger people here. One thing that [the Tenant C.H.] said on December 2 was that you can't fly with furniture. The [Other Tenants] said the people before [the Tenants] didn't make any noise, but they were out of town most of the time.

Continue to be mindful like you are now and [the Other Tenants] might stop. And if this continues, we'll have to deal with this a different way. We're open to you talking to us.

The Agent, E.M., said they decided to stop telling the Tenants every time that the Other Tenants complained about the Tenants. "Enough is enough; we can't be pulled in all directions. We still receive complaints from the [Other Tenants] in text messages, but we don't talk to the Tenants upstairs about it - no need to tell them every five minutes. The Tenants have been very accommodating; they've put carpets and noise barriers down. I don't know what more they could do."

The Tenant, C.H., said she appreciates that the Agents recognize that the Tenants are doing everything they can to bring down the noise and be good tenants. She went on: "Everyone in this building has been great, except for [the Other Tenants]. We hope to be long-term tenants." The Agent said that she hopes they are, too.

Analysis

Section 28 of the Act states that tenants are entitled to quiet enjoyment of their rental units, including "freedom from unreasonable disturbance". Policy Guideline #6 states:

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.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

From the testimony I heard in the hearing, I find that the Agents were balancing the expectation of quiet enjoyment between two sets of tenants. I find that the Tenants have tried to adapt their behaviour as best they can in order to meet the needs of the Other Tenants' right to quiet enjoyment. However, the Agents acknowledged that the Other Tenants' demands became unreasonable, so the Agents stopped disturbing the Tenants with the unrelenting complaints of the Other Tenants. I find that the Parties in the hearing acknowledged and appreciated the other's efforts to resolve the situation reasonably. I find that the Agents respect and attempt to protect the Tenants' right to quiet enjoyment from the unreasonable disturbance of the Other Tenants.

Based on the testimony in the hearing, I find that the Parties have resolved their differences, and so I dismiss the Tenants' Application, with leave to reapply, if necessary.

I award the Tenants the recovery of the cost of their \$100.00 filing fee.

Conclusion

The Tenants applied for an order that the Landlord comply with the Act, Regulation and/or tenancy agreement, because they were receiving an unreasonable number of complaints from Other Tenants who lived in the apartment below them. The Agents said in the hearing that they believed the Tenants were doing everything they could to not bother the Other Tenants. The Agents said they had stopped telling the Tenants about every complaint made by the Other Tenants. The Parties to this hearing expressed their appreciation for what the other was doing, and the Agents said they would move in another direction to resolve this matter, if the Other Tenants do not change their

unreasonable expectation of noise levels in a multi-family, wood-frame building.

Accordingly, I find the appropriate resolution in these specific circumstances is to dismiss the Tenants' Application, with leave to reapply, if necessary.

I award the Tenants the recovery of their \$100.00 filing fee, and I authorize them to deduct \$100.00 from one future rent payment in satisfaction of this award.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 07, 2019

Residential Tenancy Branch