



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on April 28, 2019, (the "Application"). The Tenants applied for an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlords attending the hearing, as well as K.D. appeared on behalf of the Tenants. Each of the parties provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlords by registered mail on May 30, 2019. The Landlords confirmed receipt. The Landlords testified that they served the Tenants with their documentary evidence in person on June 1 and again on June 6, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2018. Currently, the Tenants pay rent to the Landlord in the amount of \$750.00 on the first day of each month. The Tenants paid a security deposit in the amount of \$375.00.

The Tenant testified that she currently occupies the basement suite in a house that also contains a rental unit upstairs. The Tenant stated that new occupants moved in upstairs on April 1, 2019. The Tenant testified that since then, she has smelled marijuana smoke in her rental unit as she suspects that the occupants upstairs are smoking inside, which contradicts the Tenants' tenancy agreement. Furthermore, the Tenant stated that the occupants upstairs have been noisy, playing music and talking loudly every day. The Tenant stated that at times, the noise carries on into the later hours of the night which makes it difficult for her to sleep.

The Tenant testified that she has notified the Landlord about her concerns by phone in April 2019, as well as through several text messages. The Tenant stated that her texts have been ignored and that the noise and smell of marijuana continues. The Tenant stated that the Landlords have not taken any action to address the issues which is impacting the Tenants right to quiet enjoyment.

In response, the Landlords testified that the only contact number that the Tenants have for the Landlords is a landline telephone which does not receive text messages. The Landlords indicated that they did receive a phone call from the Tenant regarding her concerns about the smell of marijuana as well as the loud music and noises during the day and night. The Landlords stated that they have spoken to the occupants upstairs about their actions. The Landlords stated that the upstairs occupants denied any wrongdoing, and blamed the downstairs Tenants for making noise and communicating aggressively.

The Landlords stated that they are stuck between who to believe. Furthermore, the Landlords stated that they did not receive any further communication from the Tenants regarding their concerns following the phone call in April 2019, as they were unaware of the text messages that they were unable to receive on their landline. As such, they were under the impression that the issues had been resolved.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 28 of the Act provides that a Tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.

Residential Tenancy Policy Guideline 6 also sets out that;

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.

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.

In this case, the Tenant stated that she continues to experience regular disturbances from the upstairs occupants with loud music, loud noises and the smell of marijuana. The Tenant stated that she has phoned the Landlords in April 2019 and then continued to text the Landlords regarding the ongoing issues. The Tenant stated that the Landlords have done nothing to address the issues as they continue to occur.

The Landlords indicated that they spoke to the occupants upstairs about the Tenants concerns. The Landlords were under the impression that the issues had stopped as they did not hear from the Tenants again after their phone call in April 2019. The Landlords indicated that the only phone number that the Tenants have is for a landline which is not capable of receiving text messages. As such, the Landlords stated that they did not receive the subsequent complaints for the Tenants.

In this case, I accept that the Landlords dealt with the Tenants' concerns after receiving a phone call from the Tenants. I accept that the Tenants have made further complaints to the Landlords by text message, which the Landlords were unable to receive. As such, I find that the Tenants have provided insufficient evidence to demonstrate that the

Landlords were aware that the Tenants continued to be impacted by the occupants upstairs which prevented them from taking further action. Therefore, the Tenants' Application is dismissed with leave to reapply.

The Tenants are now aware that the Landlords are only able to receive phone calls, therefore, it is suggested that the Tenants phone the Landlords in the future, should the Tenants continue to experience such disturbances and ensure their concerns are effectively expressed and received by the Landlords.

The Landlords must ensure that the Tenants' right to quiet enjoyment is protected and must take action to address any situations which may impact this right. Should the Landlords fail to take action to address the Tenants' concerns, the Tenants are at liberty to make an Application for rent reduction or other monetary compensation.

Conclusion

The Tenants have provided insufficient evidence to demonstrate that the Landlords were aware of the Tenants concerns and did not take action to address them as a result. As such, the Tenants' Application is dismissed with leave to reapply.

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: June 11, 2019

Residential Tenancy Branch