



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN LEVER INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for other remedies. These were identified as a request that the landlord be ordered to take action against the tenants residing above the applicant to reduce the noise and disruption that the applicant maintained is lessening their quiet enjoyment of the rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package and written evidence, comprised of three letters sent to the landlord, sent by the tenant by registered mail on May 8, 2019, I find that the landlord was duly served with this package and written evidence in accordance with sections 88 and 89 of the *Act*. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Should any orders be issued against the landlord with respect this application

Background and Evidence

This tenancy began in July 2017, when the tenant moved into a two bedroom unit in this 51 unit rental building. Monthly rent is set at \$950.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$475.00 security deposit paid when this tenancy began.

The tenant entered into written evidence copies of three letters of complaint they have sent to the landlord about the noise and disruption they experience from the tenants who live above them. These letters were dated November 13, 2018, March 13, 2019, and the third letter was undated. The parties agreed that the tenant has raised these concerns with the landlord repeatedly. In each of these letters, the tenant maintained that the tenants upstairs cause a high level of noise, causing problems for the tenant and those staying with the tenant, included their young grandson. Much of this noise is caused by the sound of the upstairs tenants walking on their hardwood floors. The tenant maintained that the male tenant upstairs walks with steel toed boots or shoes on the floors, that they drop heavy items on the hardwood floor, that the upstairs tenants vacuum after 10 p.m. and that the young child of the upstairs tenants frequently runs along the hardwood floors. The tenant maintained that all of these and other actions by the upstairs tenants affect the quiet enjoyment of the tenant and the other three people living with them in this rental unit.

At the hearing, the tenant said that when they tried to speak with the upstairs tenants about this matter, the upstairs tenants were rude and disrespectful. The tenant claimed that the landlord has taken insufficient action with respect to their noise complaints. The tenant also expressed more general dissatisfaction with the landlord, noting that they had taken the landlord to a dispute resolution hearing in the past with respect to concerns about a bug infestation in their rental unit.

At the hearing, the landlord gave sworn testimony that they have sent the tenants who reside above the tenant six separate warning letters/notes in response to the tenant's complaints. Although the landlord did not enter these warning letters into written evidence, the landlord said that they were sent on December 17, 19 and 20, 2018, and on March 5, 7 and 8, 2019. The landlord said that they had not sent copies of these warning letters to the tenant because they were not addressed to the tenant. The landlord said that they had advised the tenant that warning letters had been sent to the upstairs tenants, a claim disputed by the tenant.

The landlord testified that on each occasion when they had sent warning letters to the upstairs tenants, that the upstairs tenants had denied that they were causing excessive noise that was disruptive. The landlord said that the upstairs tenants had even run an audio recording of the level of noise created in their rental unit by their child, one of the main issues raised by the tenant. The upstairs tenants had advised the landlord that on no occasion did these audio recordings extend beyond 40 decibels, which the upstairs tenants maintained was an acceptable level of noise for a shared rental building. The landlord said that the upstairs tenants had observed that should the landlord issue a 1

Month Notice to End Tenancy for Cause, an option available to the landlord, that they would dispute that Notice, and would likely be successful based on the audio recordings they had kept,

The landlord also said that they had offered both tenants the option of moving to other similarly sized rental units in both this building and in other buildings they landlord operates in this neighbourhood. Neither set of tenants had agreed to move. The landlord also noted that some of the other rental units have been renovated and would actually represent more value to the tenants as the landlord was willing to allow them to continue paying the same rent they had been paying at their existing rental units as a means of resolving this issue. The landlord also said that they remain willing to pay workers to conduct a move for the tenant to another suite in this building or to another of the landlord's portfolio of two bedroom rental units in this neighbourhood. However, the landlord could not guarantee a top floor rental unit, which would ensure that the tenant would not experience noise problems at other prospective rental units within the landlord's rental portfolio. The landlord testified that their company does not have any three bedroom rental units in the buildings it operates.

The tenant said that they need a larger rental unit and are looking for a three bedroom rental unit that would better meet the requirements of the four people now living in their rental unit. Since there are no three bedroom units in this rental building, the tenant realizes that any new three bedroom unit they locate will require a move to another building. The tenant repeatedly maintained that they should have to move and that any move required to address the dispute between these parties should be accomplished by requiring the upstairs tenants to move.

Analysis

In an application for dispute resolution of this type, the burden of proof rests with the party making the claim to demonstrate on a balance of probabilities that the other party has contravened the *Act*, the *Regulations* or the tenancy agreement, and that this contravention constitutes sufficient grounds to obtain the remedy sought by the applicant.

In this case, the following portions of section 28 of the *Act* describes a tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];...*

The Act enables a landlord to send warning letters to tenants who are allegedly interfering with the quiet enjoyment of other tenants in a shared rental building. If these letters prove insufficient in addressing a demonstrated contravention of the rights of others who reside in the building, paragraph 47(1)(d)(i) and (ii) of the Act enable a landlord to issue a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) to one or both of the parties to the dispute:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (d) the tenant or a person permitted on the residential property by the tenant has*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, ...*

In this case, the landlord gave sworn testimony that they have sent the upstairs tenants six letters requesting their co-operation in reducing the noise level identified by the tenant in their complaints to the landlord. It would have been helpful had the landlord entered copies of these letters into written evidence. However, I also note that other than the tenant's three letters, the tenant was also relying almost solely on sworn testimony. Neither party produced any witnesses for this hearing. Neither party submitted any written statements, either notarized or otherwise, to confirm their sworn testimony. Neither party submitted any audio recordings of the noise, although the testified that they such recordings available. Based on a balance of probabilities, I find it more likely than not that the landlord did send these specific written warnings to the upstairs tenants. This testimony coupled with the landlord's repeated offers at the hearing to assist the tenant to relocate elsewhere in the building or within the landlord's housing portfolio was in direct contrast to the tenant's claim that the landlord has failed

to do anything to resolve the concerns the tenant has repeatedly raised with the landlord.

While the tenant has found the actions of the upstairs tenants upsetting, their unsatisfactory interactions with the tenants residing above them and complaints about noise do not necessarily lead to the issuance of an order by an Arbitrator requiring the landlord to send a 1 Month Notice to the upstairs tenants. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required.

In this case, I find that there is testimony that the landlord has been attempting to resolve this matter without having to resort to the issuance of 1 Month Notices to either party. Given the limited evidence provided by the tenant and the responses the landlord claims to have received from the upstairs tenants, I find that the landlord's actions thus far have not contravened the *Act*. Under these circumstances, I find that the tenant has supplied insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about noise originating from the rental unit of their upstairs neighbour. For these reasons, I dismiss the tenant's application.

Should additional complaints be received with adequate evidence that there has been significant interference with or unreasonable disturbance of the rights of either of the tenants or the landlord, the landlord may choose to issue 1 Month Notices to one, or even both of the tenants. Those receiving the 1 Month Notices would then be positioned to dispute the landlord's allegations and attend a hearing (or hearings) where parties could call witnesses and present evidence at that time.

In the interim, I order the landlord to provide the tenant with anonymized copies of any additional warning or caution letters issued to other tenants in this building in response to complaints of noise raised with the landlord by the tenant. This will assist in ensuring that the tenant is properly informed that their complaints are not being ignored by the landlord.

I would also encourage the landlord and both sets of tenants to work together to explore other options that may lead to a resolution of the noise complaints that the tenant has initiated. The landlord's continued willingness to assist one of the parties to relocate to

another rental unit once a suitable unit becomes available may be helpful in this regard as a way of improving the quality of life for all concerned.

Conclusion

I dismiss the tenant's application.

The landlord is ordered to provide anonymized copies of any additional warning or caution letters issued to other tenants in this building in response to complaints of noise raised with the landlord by the tenant.

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 17, 2019

Residential Tenancy Branch