



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “Regulation”), and/or tenancy agreement, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing as was an agent for the Landlord (the “Landlord”). The Tenant also had a colleague present as support, but they did not present any testimony or evidence.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Landlord be ordered to comply with the *Act*, *Regulation*, and/or tenancy agreement?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy started in February 2018. Current monthly rent is \$1,409.00 and the Tenant paid a security deposit of \$687.00 at the start of the tenancy.

The Tenant provided testimony regarding his request for the Landlord to comply. He stated that this is related to his right to quiet enjoyment of the rental unit, free from unreasonable disturbance.

The Tenant stated that a new neighbour moved in upstairs in May 2018 and when introducing himself he saw and heard a cat. The Tenant stated that residents are not allowed pets, which was confirmed by the Landlord. The Landlord stated that some of the longer-term residents in the building have pets, but any resident who has moved into the building in the last 4-5 years has not been allowed pets.

The Tenant further testified that along with noises from the cat(s), he began hearing loud walking and other sounds from the upstairs rental unit. He stated that he began speaking to the building caretaker in the summer of 2018 regarding his concerns.

The Tenant testified that on June 22, 2019 he filed a complaint with the Landlord by email as by May and June 2019, the noises had become louder and unbearable. The Tenant noted that the noises are significant between 10:00 pm and midnight, as well as between 2:00 – 4:00 am and 5:00 to 6:00 am.

The Tenant described the noises as noises from cats, including scratching the rugs, knocking things over, running around and playing, as well as noises from the neighbour and the neighbour's partner which includes footsteps, stomping, dropping things, doors opening and closing and walking around with shoes on. The Tenant estimated that the noise disturbances occur approximately 4-5 days per week. The Tenant stated that it is difficult to get a clear recording of the noise on his phone without proper recording equipment.

The Tenant also referenced quiet hours in the building between 10:00 pm and 7:00 am. The Landlord confirmed that although not in the tenancy agreements, that the residents of the building are aware of the rule regarding quiet time during this period each evening/morning.

The Tenant stated that he has a right to quiet enjoyment of his rental unit and therefore would like the quiet hours enforced. He stated that he would also like the Landlord to enforce the no pet clause to help reduce the noise occurring from the upstairs rental unit. The Tenant testified as to extreme stress due to the noise and stated a lack of sleep on a regular basis. He described the conditions of the rental unit as “unliveable” due to the noise.

The Tenant submitted into evidence copies of multiple emails exchanged with the Landlord regarding the Tenant’s noise concerns and suspicions of cats in the upstairs unit. The Tenant also submitted a copy of a text message sent from the upstairs neighbour on May 13, 2019 in which the neighbour admits to having a cat. In addition, the Tenant submitted copies of phone logs showing calls made to the Landlord. The Tenant also submitted two photos of cats on a balcony which he stated are an example of how the Landlord is not enforcing the no pet policy as this is a newly occupied rental unit, yet the occupants clearly have cats in plain view on the balcony.

The Landlord testified that the building is wood frame and was built in 1964 and stated that due to this, there is noise transference between the rental units. He stated that they have received the Tenant’s complaints and have taken action on each complaint received in a timely and reasonable manner. The Landlord testified that they have emailed the upstairs neighbour, as well as sent letters and met with the neighbour in person.

The Landlord also referenced two inspections of the neighbour’s rental unit in which they did not find any evidence that would point to the presence of cats in the rental unit. He stated that another inspection is scheduled for next week.

The Landlord stated that they must provide 24 hours notice to enter the neighbour’s rental unit as entry to check for pets if not an emergency. The Landlord also stated that if pets are found in the upstairs unit, that this will be dealt with accordingly as pets are not allowed. However, The Landlord confirmed that so far they have not seen any evidence of pets in the unit.

The Landlord stated that it has been difficult to have a concrete understanding of the significance of the noise described by the Tenant and that they have received little verification from the Tenant regarding the severity of the noise. This was discussed between the parties at the hearing.

The Landlord submitted a written submission into evidence in which they outline the actions they have taken in response to the Tenant's complaints which include written correspondence to the upstairs neighbour and regarding inspections of the upstairs unit.

In the submissions the Landlord also notes that the upstairs neighbour has taken steps to mitigate the issue, such as purchasing large rugs to dampen sound. The Landlord also submitted copies of letters and emails to the upstairs neighbour regarding the noise complaints as well as responses from the neighbour. In an email to the Tenant dated August 26, 2019, the Landlord writes that they have not received any other complaints regarding noise from the upstairs rental unit.

Through the written communication the Landlord also notes that they are trying to balance the needs of both parties, given that the Tenant is notifying them of significant noise disturbance, while the upstairs neighbour has denied any noise beyond day to day living.

The Landlord stated that the upstairs neighbour is willing to move, and they have been showing other rental units to the neighbour.

The Tenant has also applied for monetary compensation in the amount of \$5,860.00. This includes a claim for time lost commuting in the amount of \$2,272.00. The Tenant testified that although he normally works at home one day per week, he has been unable to do so due to the noise in the rental unit which causes significant distractions. Therefore, he calculated the time spent commuting to his job based on his regular hourly wage for a total of \$2,272.00 over the past four months.

The Tenant has also claimed \$738.40 for time spent with email and phone correspondence to the Landlord regarding the issues with the upstairs neighbour. The Tenant stated that this was calculated based on his hourly wage and submitted calculations showing the time spent on each email and phone call.

Lastly, the Tenant has claimed \$2,750.00 for pain, suffering and stress due to dealing with the noise issues from upstairs. The Tenant testified that this was calculated at 50% of his rent for a period of four months at a monthly rent amount of \$1,375.00. The

Tenant stated that his rent was increased starting in October 2019, which is why he conducted the calculations with the previous monthly rent amount.

The Tenant also noted that he would like to add additional months to his monetary claim due to the time passed since filing the application.

The Landlord testified that they should not be responsible for commuting time for the Tenant given that the unit was not rented as an office space. The Landlord also questioned the amounts claimed for sending emails and making phone calls as they have been responding to the Tenant's complaints and trying to resolve the issues. The Landlord also questioned why the Tenant was claiming 50% of his rent for pain and suffering and stated that this amount seemed high.

The parties were provided the opportunity to discuss settlement and although unable to reach a specific agreement, the Landlord agreed to notify the Tenant of any available rental units in the building or any of the other buildings managed by the Landlord. The Tenant agreed that he was open to the possibility of moving if necessary to resolve this issue.

Analysis

The Tenant has applied for an order for the Landlord to comply with the *Act*, *Regulation* and tenancy agreement and referenced his right to quiet enjoyment of the rental unit. As such, I refer to Section 28 of the *Act* which states the following:

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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Tenant testified as to unreasonable disturbance from the upstairs neighbour and submitted significant evidence showing that the Tenant and Landlord have been in communication regarding the noise complaint concerns. However, I also find significant

evidence from the Landlord which shows that they have taken steps to respond to the Tenant's concerns, such as letters to the upstairs neighbour, inspections of the upstairs rental unit and working with the upstairs neighbour to find a new unit to move to. I find that the Landlord's response to the Tenant's concerns has been reasonable, appropriate and timely.

As the Tenant has the burden of proof in this matter, I also find insufficient evidence from the Tenant to establish the significance of the noise disturbance. While the Tenant has provided email and phone complaints to the Landlord, it seems that the Landlord was also unsure as to the significance of the noise as they questioned this during the hearing and also submitted emails from the upstairs neighbour who denies any noise beyond that of day to day living. In the absence of further evidence such as recordings of the noise, witness letters, or written complaints from other tenants, I can understand the difficulty of the Landlord taking action beyond what they have already done.

Therefore, I do not find that the Landlord is in breach of the *Act* or *Regulation* and accordingly do not find that they should be ordered to comply. I also note that neither party submitted a copy of the tenancy agreement, so I decline to order the Landlord to comply with the tenancy agreement.

While it does seem possible that the upstairs neighbour has a cat in the rental unit and that noise is occurring during the quiet hours, I understand the difficulty for the Landlord in being unable to pinpoint the issues with noise or to determine whether the upstairs neighbour is in breach of the clause regarding pets. However, I find that the Landlord is committed to solving the issue between the Tenant and upstairs neighbour.

Although the Tenant and Landlord spoke about the options of the upstairs resident moving into another rental unit or the Tenant moving, I find that I cannot order either of these to happen. I cannot make orders regarding another tenancy and as the Tenant moving depends on the availability of other rental units and the willingness of the Tenant to accept another rental unit, I find that I can also not order the Landlord to move the Tenant.

Instead, I found the Landlord to be open to working with the Tenant to resolve the issue and ensure that the Tenant does have quiet enjoyment of his rental unit. The Landlord stated their willingness to find a new rental unit for either of the parties and to continue regular inspections of the upstairs unit to ensure compliance with the tenancy agreement and *Act*. Therefore, the parties should continue to communicate regularly to resolve the issues together.

Regarding the Tenant's monetary claims, I decline to award any compensation. As stated, I am not satisfied that the Tenant has met the burden of proof to establish that the Landlord has breached the *Act*. As stated in Section 7 of the *Act*, if a party does not comply, the other party may be entitled to compensation. In the absence of sufficient evidence that the Landlord has interfered with the Tenant's right to quiet enjoyment (either by their action or inaction), I am not satisfied that the Tenant should be compensated. Instead, despite the issue not yet being resolved, I accept the evidence that the Landlord is taking reasonable steps to resolve the issue.

The Tenant claimed compensation for time spent sending emails and making phone calls, but I find that this communication was necessary to notify the Landlord of the issues and is not evidence of non-compliance by the Landlord such that the Tenant should be compensated. A landlord cannot address noise issues without being aware of them and as stated, I find that the Landlord continues to try to resolve the issue.

Regarding the claim for time spent commuting, I am also not satisfied that the Tenant submitted sufficient evidence to establish that they are no longer able to work in the rental unit during the day. The Tenant also noted during his testimony that the majority of his concerns occur at night and early in the morning, during the "quiet hours", so I am not satisfied that the Tenant is no longer able to work in the rental unit.

Regarding the Tenant's claim for pain and suffering at 50% of rent for the past four months, I am also not satisfied that the Tenant has met the burden of proof to establish that he has lost 50% enjoyment of the rental unit due to noise from the upstairs rental unit. Therefore, the Tenant's monetary claims are dismissed, without leave to reapply.

I also note that while the Tenant indicated at the hearing that he would like to add additional monetary claims due to the time that has passed since the Application for Dispute Resolution was filed, I decline to do so. The Tenant did not amend the application to add additional claims and therefore my decision only relates to the amount claimed as indicated on the application. The Tenant may file a new application should there be additional claims that have arisen since the filing of the Application for Dispute Resolution.

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee.

Conclusion

The Application for Dispute Resolution is dismissed, without 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: December 16, 2019

Residential Tenancy Branch