



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 24, 2019, (the "Application"). The Tenant applied for an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, as well as the return of the filing fee, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord, the Tenant C.S., as well as two occupants who were named in the Application, J.H. and D.W., attended the hearing and provided affirmed testimony.

Preliminary Matters

The Applicants submitted an amendment to the Application on January 9, 2020, requesting to remove J.W. and D.W. who were listed as Applicants from the Application. At the start of the hearing, J.H. and D.W. stated that they are not a party to this dispute which seems to be between the Tenant and the Landlord. As no one in attendance objected, J.H. and D.W. were removed from the Application and disconnected from the teleconference hearing. The hearing continued with Tenant C.S. and the Landlord.

The Tenant testified that she served her Application to the Landlord by registered mail on December 11, 2019. The Tenant stated that she served the Landlord with a copy of her documentary evidence in person on January 9, 2020. The Landlord confirmed receipt. The Landlord testified that he served the Tenant with his documentary evidence in person on January 13, 2020. 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. Is the Tenant entitled to an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2014. Currently, the Tenant pays rent to the Landlord in the amount of \$1,309.00 on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00, which the Landlord continues to hold.

The Tenant has applied for the Landlord to comply with the *Act* as the Tenant feels as though her right to quiet enjoyment has been breached. The Tenant testified that since the summer of 2019, she has endured constant noise of stomping and door slamming above her. Also, the Tenant stated that she is being verbally harassed by the occupants who live in the rental unit above hers. The Tenant stated that she notified the Landlord regarding her concerns on September 5, 2019 requesting that the Landlord deal with the situation in order for the Tenant to be left alone. The Tenant provided a copy of the letter she sent to the Landlord in support.

The Tenant stated that the Landlord has spoken to the other occupants, however, as recent as January 9, 2020 the Tenant continues to be verbally harassed by the upstairs occupants. The Tenant stated that she ignores the other occupants, however, the issues continue. The Tenant stated she just wants to be left alone and wishes that the Landlord take action in response.

The Landlord responded by stating that he owns and resides in the 4plex rental property and that currently he shared a wall with the Tenant and the upstairs occupants. The Landlord stated that he has not witnessed any verbal harassment or any noise from

either the upstairs occupants or the downstairs Tenant. The Landlord stated that he has maintained regular communication with the Tenant and the occupants when concerns arise. The Landlord stated that after he received the Tenant's concerns on September 5, 2019, he emailed the occupants to discuss his expectations and asked that each of them ignore each other and be mindful of the noise levels.

The Landlord stated that while he has never witnessed the occupants making noise, he has asked the Tenant to provide him with proof of the noise and verbal harassment. The Landlord stated that to date, he has not received any evidence from the Tenant to support her claim that her quiet enjoyment is being breached. The Landlord stated that he is wishing to resolve this issue, however, it has come to a point where the upstairs occupants are blaming the Tenant and the Tenant is blaming the upstairs occupants. As such, it has created a "she said, she said" situation that is difficult to resolve.

If successful, the Tenant is seeking the return of the filing fee paid to make the Application.

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 noise disturbances and verbal harassment from the upstairs occupants with stomping, door slamming and name calling. The Tenant stated that she has notified the Landlord on September 5, 2019 regarding her concerns, however, the issues continues to occur.

The Landlord indicated that he communicated his expectations to the upstairs occupants regarding the Tenant's concerns, however, they deny the allegations and blame the Tenant, creating a she said, she said situation. The Landlord stated that he lives in the same rental property as both the Tenant and the occupants and has never witnessed any verbal harassment or noise from the upstairs occupants. The Landlord stated that he is willing to help the Tenant and has requested she provide evidence of such noise or harassment. The Landlord stated that he has not yet received anything from the Tenant.

In this case, I accept that the Landlord dealt with the Tenant's concerns after receiving notification from the Tenant on September 5, 2019. I accept that the Tenant feels as though the noise and harassment continues to be an issue. I find that the Landlord has taken reasonable action once he received the complaint from the Tenant. I am satisfied that the Landlord has not witnessed any noise or harassment first hand, while residing directly beside the Tenant and upstairs occupants. I find that the Tenant has provided insufficient evidence to demonstrate that the noise and harassment is frequent and ongoing interference or unreasonable. Therefore, the Tenant's Application is dismissed with leave to reapply.

The Tenant is encouraged to continue to refrain from engaging with the upstairs occupants and document and record any instances which may constitute a breach of quiet enjoyment. The Tenant is to ensure that her concerns and evidence to support those concerns are clearly communicated and provided to the Landlord.

The Landlord 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 Landlord fail to take action to address the Tenant's concerns, the Tenant is at liberty to

reapply. As the Tenant was not successful with the Application, I find that she is not entitled to the return of the filing fee.

Conclusion

The Tenant have provided insufficient evidence to demonstrate that her right to quiet enjoyment has been breached and that the Landlord has failed to take appropriate action to resolve the Tenant's concerns. As such, the Tenant's 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: January 24, 2020

Residential Tenancy Branch