



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK RENTALS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement.

The landlord's property manager (the "property manager"), owner and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the property manager with his application for dispute resolution and evidence by hand delivery at the offices of the management company in Surrey on December 17, 2019. The property manager confirmed receipt of the tenant's application for dispute resolution. I find that the property manager was served in accordance with section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for quiet enjoyment and for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began March 2019 and is currently ongoing. Monthly rent in the amount of \$1080.00 is payable on the first day of each month.

The property manager testified that the owner BK purchased the house in November 2019. A new tenancy agreement was signed by the parties on December 1, 2019. The tenant did not pay a security deposit.

The tenant testified that the family in the upstairs unit were unable to control their children and that the noise was constant during the day and in the evenings. He testified that he had made several complaints to the property manager at Skylark Rentals and that he was being ignored.

Tenant testified that the children were undisciplined and uncontrollable, he further testified that they were allowed to play outside until late in the evening. He claimed that the children had broken the fence in the garden and damaged the rental unit upstairs.

The tenant testified that the property manager had been rude to his wife during a recent daytime visit. His wife "a new immigrant" to Canada, was unable to decipher what the Property manager was saying. The tenant is of the opinion that the property manager is "related" to the family upstairs.

The property manager testified that he had not ignored the applicant or had been rude to the tenant's wife. He testified that each time he received a complaint, he would visit the upstairs rental unit and on two separate occasions he was called by the tenant complaining that the children upstairs were making excessive noise.

The property manager testified that he was in the neighbouring area and arrived within 5 minutes of being called, he found the children asleep in their beds around 8:30 p.m. and on another occasion the children were at school, (apart from the two-year-old child).

The property manager testified that the owner of the property has attempted to mitigate the noise, new thick carpets, and rugs for the walkway had been purchased. He testified that the family upstairs had also moved their children aged 2, 6 and 8 to another bedroom in order that they could reduce the noise level.

The property manager denied any relationship with the family in the upstairs unit and advised that they were selected randomly a few months ago. The Property manager testified that the situation has become unbearable for the family upstairs, and they are

“actively seeking” for a new place to move to. He testified that on one occasion the applicant and his wife played “vulgar adult movies loudly” adjacent to the air vents which became extremely uncomfortable and embarrassing for the family upstairs.

The property manager testified that there had been a death in the family in the upstairs unit and people were visiting to pay their respects, the tenant was requested to turn down the noise and refused to do so.

The owner testified that she did not have any knowledge that there was damage to the upstairs rental unit or the fence on her rental property.

The tenant testified that he worked in the capacity of a mortgage broker, he was requested to provide his hours of work, he advised that he worked full time and worked a couple of evenings during the week at home.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of damage or loss and order a party to pay compensation to the other. To claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove on a balance of probabilities, that it is more likely than not, that the existence of the damage/loss, resulted directly from a violation of the agreement or a contravention of the *Act* by the other party.

Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove entitlement to a monetary award.

Loss of Quiet Enjoyment

Section 28 of the *Act* states as follows:

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 Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

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.

The issue in this case is whether the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Based on a review of all the evidence and testimonies, I am satisfied that the property manager and the owner took all reasonable steps to mitigate and address the tenant's concerns regarding the noise from the upstairs unit.

Since the tenant's application, the property manager testified that the laminate flooring was replaced by "thick, heavy" carpets, and the three children were moved to another bedroom at the back of the house to reduce the noise level.

I find the owner and property manager's testimonies credible that they have attempted to mitigate the noise and have made all attempts to pacify the tenant. Temporary

discomfort of the entitlement to quiet enjoyment, or inconvenience does not constitute a basis for a breach”

The testimony of the tenant is contradictory, the tenant gave testimony that the children were screaming and shouting on two separate occasions. The property manager testified that he visited the rental property and found the children “in bed” and on another occasion “at school” Further, credibility issues have been raised regarding damage to the upstairs unit and the fence. The property manager and owner both denied any damage had occurred to the upstairs rental unit.

I find that the tenant has not provided the appropriate evidence in relation to excessive noise. I find the tenant has failed to meet the burden of proof with respect to any of his claims for loss of quiet enjoyment. I dismiss the tenant’s application.

Conclusion

I dismiss the tenant’s Application for Dispute Resolution, in its entirety and 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: February 25, 2020

Residential Tenancy Branch