



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY
MANAGEMENT and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, the written tenancy agreement, or Residential Tenancy Regulations; and
- recovery of the filing fee paid for this application.

The tenants, the landlord's agents (landlords) and their witness attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The witness was excused from the hearing until her turn to testify.

At the outset of the hearing, neither party raised any issue about service of the other's evidence or the tenants' application.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the considerable amount of evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, with a view to brevity, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlord comply with the Act, regulation, or tenancy agreement?

Are the tenants entitled to recovery of their filing fee?

Background and Evidence

This tenancy began on June 1, 2018, for a monthly rent of \$1,100.00, and a security deposit of \$550.00. The testimony was that the current monthly rent is \$1,156.00.

The tenants, in their application under their request seeking the landlord's compliance with the Act, stated that from June 2018, two weeks after moving into the rental unit until shortly before filing their application on December 19, 2019, they have been disturbed by loud noise from the tenant in the suite next to them. This was brought to management's attention every time and nothing has been done.

In support of their application, the tenants' relevant evidence included audio recordings, emails sent to the landlord, a doctor's note, their lawyer's letters to the landlord, a summary of a report made to the RCMP, and letters from the landlord. The tenants also submitted a copy of the written tenancy agreement and a notice of a parking rent increase issued by the landlord.

As to the noise issues, the tenant testified that from the second week of their tenancy, they heard yelling, screaming and items being thrown from the next-door tenant, who in this case, is JN, the landlord's witness. These matters were reported to the landlord. This has been an ongoing issue from the beginning of the tenancy and to support their claim when reporting to the landlord, they sent audio recordings.

The tenant said that the loud noises were usually between the hours of 10:00 p.m. to 4:00 a.m. The tenant also had loud conversations on her balcony, adjacent to theirs.

Other noises from JN include slamming her patio door and cupboards, according to the tenants, and they requested meetings with the landlord. The tenant said they assumed this would solve the noise issues from next door.

The tenant said one instance of the loud noise from next door was reported to the RCMP, as the tenant was having a loud argument. This report was made in June 2018.

The tenant said that the noise seemed to abate for a few months, and then would start again.

Another issue addressed by the tenants dealt with smoking. The tenant said they believed and were told that the apartment building was smoke-free; however, they have encountered people smoking in the building, which was also reported to the landlord.

The tenant confirmed there were three instances of smoking reported to the landlord, September 14, 2018, May 13, 2019, and September 29, 2019.

The tenants mentioned that they are also disputing the increase in the parking rent, which was given to the tenants in a notice of January 2, 2020. The notice indicated that the parking rent will increase from \$25.00 to \$75.00 per month, beginning March 1, 2020.

When questioned, the tenant said they live in the end unit on the third, top floor of the apartment building, with JN living on the other side.

The tenant said they believed the apartment building was approximately 50 years old.

Landlord's response-

Landlord BC said they have received 100's of emails from these tenants since the beginning of the tenancy, it is sometimes hard to sort through all of them to determine what is and is not relevant.

BC said she and the building manager, GA, have been talking to JN about the complaints made by the tenants.

BC said that JN's tenancy pre-dated the tenants' tenancy, and that there have never been any complaints made about JN until the tenants moved in. The landlord said they have really tried to appease the tenants, but that the apartment building is a very old, wood framed building. The landlord said noise travels throughout the building and it is hard to pinpoint where noise is coming from. The landlord said there are 84 units in the building and the location is on a busy intersection.

The landlord said that in this type of old building, noise does travel up and they cannot make the building sound proof.

The landlord said she and GA have walked the hallways and have never heard any excessive noise coming from JN's unit.

GA said she walks through the building at least 3 times a day and has not heard excessive noise.

The landlord said that JN does have a hard time opening her patio door and believes there has been retaliatory measures by both sets of tenants against the other.

The landlord said they have listened to the tenants' audio recordings and from their listening, the noise does not seem excessive.

The landlord said she is at her wit's end to determine what is reasonable noise.

The landlord said that any incoming tenants are not allowed to smoke as they are attempting to make the building smoke-free; however, some long-term tenants did not have the same terms in their tenancy agreements and their smoking permission has been "grandfathered".

The landlord said she has addressed the three smoking complaints with the smokers and believed the issue was dealt with as no further issues arose.

The landlord said she has looked at the carpets in the rental unit, and they were stained at the move-in inspection. The landlord said the carpet seems in good condition to her and seemed satisfactory to the tenants when they moved in.

As to the issue raised by the tenants about an increase in their parking fee, the parking agreement is separate from the tenancy agreement, according to the landlord.

The landlord's relevant evidence included notices and warnings to both the tenants and JN, the tenancy agreement, addendum, the "Parking Stall Rental Agreement", the receipt for drapery and carpet cleaning for the rental unit, dated May 30, 2018, and emails from JN.

Witness, JN-

JN said she is aware of the complaints against her made by the tenants and wanted to now speak her peace.

JN said she has been a tenant for nine years and has never had one complaint made against her, until these tenants moved in two years ago.

JN said her work hours are later and she usually comes in at 12:45 a.m.; however, she said when she comes into her apartment, she is now afraid to cook or shower and is afraid of living there. JN said she sometimes will not come in the apartment until she is so tired, she will fall asleep immediately.

JN said that she has become afraid of the tenants as they threatened to steal her cat and take it to the SPCA.

JN said when she comes in, she watches tv on her laptop with headphones so that there is no noise.

JN said on December 1, when the tenants said she made excessive noise such as banging and slamming doors, she had put up her Christmas tree from 5 to 8 p.m. and then left, spending the night away. Therefore, any noise the tenants heard was not from her apartment.

JN denied being home on December 5, when the tenants claimed she had been slamming the door loudly. JN said her patio door does need to be fixed as she has a hard time opening and closing the door. JN said she has understanding from other neighbours, but not these tenants. JN said often when she has to slam the door to close it, she hears the tenants open and slam their door multiple times.

JN said these tenants have been banging on their walls even during the non-quiet hours.

JN said that on September 14, at 6:00 p.m., when she was out on her balcony adjoining the tenants' with two others, the tenants screamed at them to "shut-up or else". The tenants then started banging on the walls.

In another instance on October 10, at 7:00 p.m., according to JN, she had a friend over for coffee and the tenants started banging on the wall.

JN said even a shower results in the tenants banging on her wall and in the tenants banging on her balcony railing when she has been out there singing and cooking.

JN said she did take responsibility for the one time the music was excessive.

JN said she tries to be the best neighbour she can be, but now feels bullied by the tenants.

Analysis

The tenants were responsible to prove the claims in their application on a balance of probabilities, or in other words, the events as described are more likely to have happened as not.

While the tenants did not specifically state what part of the Act to which they refer in making their request for the landlord to comply with the Act, I infer from their evidence that their application relates to their right to quiet enjoyment of their rental unit.

In this case, the tenants alleged that their right to quiet enjoyment was negatively affected as a result from the noises from the tenant, JN, next door, which they claim to be excessive.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the evidence, including the audio recordings, and the testimony of the parties, I find the tenants have failed to prove the landlord breached section 28.

The rental unit is an older, wood framed, 84-unit apartment building.

While the adjoining tenant, JN's, hours of work are later than most, I accept that she does her best to be as quiet as possible when coming home by not taking showers or by watching television on her laptop.

Additionally, I accept the testimony of JN, who I find to be clear, consistent, and forthright, that on some of the documented times of noise heard by the tenants she was not in her rental unit. I therefore accept that JN has not been making the noise in every or most instances to which the tenants complain. I find the tenants are not willing to accept that they would hear noise from any unit other than JN's. I find this to be an unreasonable stance.

I find the evidence strongly supports that noise, which can appear to be excessive but is not, is quite common in this building, due to the age, character, and composition.

This led me to find that some of the noises the tenants heard is everyday living, which in this case, is in an older, wood frame building.

Occupants of multi-unit buildings often hear the sounds of their neighbours and can be disturbed if their neighbours have different work or social schedules. However, after listening to the tenants' audio recordings, I found the level of sound to be normal and not unreasonably disturbing.

I also accept the landlord's evidence that they did not hear the alleged noise, nor have they received complaints from any other tenants or occupants of the rental building about tenant JN. I find their testimony that they had received no complaints from other tenants about JN prior to the tenants moving in to be compelling and persuasive.

Having said that, while I find no evidence that JN has been making unreasonable noise, I also find that the evidence shows that the landlord has talked to and warned the adjoining tenant, JN, about the noise complaints. In doing so, I find that they have taken reasonable steps to address the tenants' concerns.

As to the smoking issue, I accept that the landlord is attempting to make the entire residential property smoke-free; however, I find it reasonable that in a building of that age, some tenants have been residing there prior to a no-smoking clause in their tenancy agreement. As a result, they would not be prohibited from smoking.

Having said that, I also find the landlord has taken steps to minimize the intrusion of smoke to the tenants. I find support for this conclusion in that the tenants have only made three complaints during their entire tenancy.

For the above reasons, I find that the landlord has complied with section 28 of the Act and I dismiss their application for an order that the landlord comply with the Act, regulation, or tenancy agreement.

Parking fee-

Although the tenants in their application did not apply to dispute the parking fee increase, I infer from their evidence that this was their intention.

Parking is an item that may be included in rent. Whether or not a tenant's parking is included in rent must be determined based on the tenancy agreement as well as any other agreements between the landlord and the tenant regarding parking, which may create additional terms of the tenancy agreement.

Upon consideration of the evidence and section 7(1)(g) of the Residential Tenancy Regulation, I find that parking was not included in the monthly rent and was governed by a separate rental parking agreement. Under the Regulation, a landlord may charge fees for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

Therefore, it is open to the landlord to remove the service or change the fee from time to time. As a result, I decline to make any decision on the landlord's increase in the parking fee.

Finally, while the tenants have submitted evidence about the fact they carry tenants' insurance, the tenants did not explain how this related to their application.

I also find that the tenants have not explained how their evidence about the carpet in the rental unit related to their application.

Conclusion

For the above reasons, I have found the tenants submitted insufficient evidence to support their application, and it is dismissed without leave to reapply, including their request to recover the filing fee.

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: March 4, 2020

Residential Tenancy Branch