



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 Director of Property Management, (the "landlord") the tenant and her witness SH 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 she served the landlord with her application for Dispute Resolution and evidence by hand delivery at the offices of the landlord on March 13, 2020. The landlord confirmed receipt of the tenant's application for Dispute Resolution. I find that the landlord was served in accordance with section 88 and 89 of the *Act*.

The landlord submitted that he uploaded his evidentiary material. The tenant confirmed receipt of the landlord's evidence.

Issue to be Decided

Is the tenant entitled to an order 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 June 1, 2019 and will be reverting to a month to month tenancy on May 31, 2020. Monthly rent in the amount of \$1,150.00 is payable on the first day of each month.

The landlord affirmed that his Property Manager was to attend the hearing as she had been dealing with the tenant's issues but due to an illness was unable to do so.

The tenant testified that the tenant upstairs has a disability and believes he is in a wheelchair and is unable to control the noise in the evenings and late at night. She affirmed that he slept during the day and stayed awake at night disturbing her and her daughter's sleep. The tenant affirmed that the tenant upstairs was "loud and noisy" and "regularly dragged and closed doors" The tenant testified that she had made several complaints to the Property Manager but felt she was being ignored.

The tenant testified that the neighbouring tenant objected to her smoking in the patio and constantly screamed at her. She also testified that she had to deal with an issue of dogs barking in one of the units and was unable to sleep at night, which also resulted in her daughter waking up during the night.

The landlord testified that they had not ignored the tenant. The landlord affirmed that each time the Property Manager received a complaint, she would take steps to investigate it. The landlord affirmed that they had written to the tenants upstairs and adjacent to the tenant. He testified that the Property Manager had visited the tenants in the building but the disputes relating to the incidents differed and the nature of the disputes were different to what the tenant testified to.

The landlord testified that the property is an old property and was constructed of wood and that the level of noise travelled easily between the units. He testified that the landlord has attempted to mitigate the noise in these properties by providing carpets and linoleum flooring. The landlord testified that the tenant upstairs has a disability and is in a wheelchair and that the Property Manager has written to the tenant upstairs.

The tenant testified that she believed the flooring upstairs was laminate or wood flooring. During the hearing the landlord advised that he did not have the authority to provide new flooring but would investigate the matter and was certain that it was company policy to provide carpets and linoleum generally in the older buildings.

The tenant's witness SA attended the hearing and provided affirmed testimony that the tenant stayed with her during the entire period from December 5th to December 13, 2020 and that she financially supported the tenant during this period. This was contrary to the evidence filed by the landlord.

The tenant sought a reduction of the rent due to the noise levels created by other tenants in the building.

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 landlord took reasonable steps to mitigate and address the tenant's concerns regarding the noise from the upstairs unit and the adjacent tenants.

I find the landlord's testimony reliable that they have attempted to address and 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.

I find that the tenant has not provided sufficient evidence in relation to excessive noise or the landlords failure to take reasonable steps or to respond to her complaints. I find the tenant has failed to meet the burden of proof with respect to her claims for loss of quiet enjoyment, consequently, 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: May 07, 2020

Residential Tenancy Branch