



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC,

Introduction

On August 5, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. The Tenant and Landlord’s agent (“the Landlord”) appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and 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.

Issues to be Decided

- Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began in February 2019 and is on a month to month basis. Rent in the amount of \$348.00 is to be paid to the Landlord by the first day of each month.

The Tenant rents a one-bedroom unit located within a 21-story residential building containing 220 rental units.

The Tenant testified that he is delighted with how the Landlord present at the hearing has dealt with him during the tenancy. The Tenant testified that approximately nine months ago a new occupant moved onto the residential property and lives in a rental unit located directly above the Tenant.

The Tenant testified that the new occupant is making noise that is hard to identify /determine. He testified that the noise sounds like a cane dropping or door closing. He testified that the noise is having an impact on the Tenant's enjoyment of his tenancy.

The Tenant testified that after two months of dealing with the issue he brought the issue to the attention of the Landlord.

The Tenant submitted that he wants the Landlord to address his concern by discussing the noise issue with the occupant living above him.

In response to the Tenant's testimony, the Landlord provided testimony that he feels he has responded to the Tenants concern/ complaint. The Landlord testified that he spoke to the occupant who lives above the Tenant. The Landlord stated that the occupant reports that he is not awake during the times the noise is reported and he has also been away from his unit during occasions where noise was reported.

The Landlord testified that he has done everything he can do try and identify where the reported noise is coming from. The Landlord believes that the Tenant may be sensitive to noise and referred to previous noise complaints made by the Tenant.

The Landlord submitted that the residential property contains 220 rental units and it is reasonable that there will be some noise. The Landlord submitted that the reported noise appears to be standard day to day noise rather than noise created deliberately or due to a someone having a loud party.

Analysis

Section 28 of the Act, states that 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

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

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The issue for me to determine is whether or not the Landlord has failed their obligation to protect the Tenants right to quiet enjoyment. Do the noise disturbances amount to substantial interference with the ordinary and lawful enjoyment of the premises; and if so, has the Landlord failed to take reasonable steps to correct the problem?

I have considered whether or not the noise disturbances coming from the unit located above the Tenant amounts to substantial interference with the ordinary and lawful enjoyment of the premises. The Tenant did not provide any detailed testimony on the frequency of the disturbances and the level of discomfort the noise has caused him. I find that the noise described appears to be what the Landlord described as day to day noise. I find that it is reasonable to expect there will be some noise or occasional noise when you accept a tenancy in a multi unit 21 story building. I find that there is insufficient evidence from the Tenant that the noise amounts to substantial interference with his enjoyment of the property.

I also find that the Landlord responded to the Tenant's complaint by speaking to the occupant living above the Tenant. The Landlord investigated and is unable to determine the cause and source of the noise which was described as something dropping. I find that the Landlord has not failed to take reasonable steps to deal with the Tenant's complaint.

After considering the totality of the evidence, I find that the Landlord has not breached the Act by failing to protect the Tenant's right to quiet enjoyment.

The Tenant's application is dismissed.

Conclusion

I find that the Landlord has not breached the Act by failing to protect the Tenant's right to quiet enjoyment.

The Tenant's application is dismissed.

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: September 18, 2020

Residential Tenancy Branch