



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

On October 28, 2020, the Tenants submitted an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause and for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement. On November 26, 2020 the Tenants submitted another application seeking an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was set as a teleconference hearing. The Landlord and Tenant 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.

Preliminary and Procedural Matters

At the start of the hearing the Landlord agreed to withdraw the One Month Notice to End Tenancy for Cause dated October 28, 2020. The Tenants agreed to withdraw their dispute of the One Month Notice.

One Month Notice to End Tenancy for Cause dated October 28, 2020 is cancelled.

The hearing proceeded on the Tenants remaining claim for the Landlord to comply with the Act, Regulation, or tenancy agreement.

Issue to be Decided

- Are the Tenants entitled to an order that the Landlord to comply with the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 1, 2020 and is on a month to month basis. Rent in the amount of \$1,400.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$600.00. The Landlord and Tenants provided a copy of the tenancy agreement.

The Tenants are seeking an order requiring the Landlord to provide them with quiet enjoyment of their tenancy.

The Tenants testified that that they are being disturbed by noise coming from a gymnasium located within the building where they live. The Tenants testified that there is a commercial property below and a residential property above. The Tenants testified that there is a gym located below and to the side of them on the same floor. A bathroom of the gym is adjacent to a wall of the rental unit. The Tenants testified that the gym opens at 4:30 am and the people using the gym and bathroom make noise that wakes the Tenants up. The Tenants submitted that they tried moving their bedroom area to the other side of the rental unit; however, other noise from the gym still disturbs them. The Tenants provided documentation listing the occasions when they were disturbed.

The Tenant testified that he was aware there was a gym located on the property before he entered into the tenancy agreement. He stated that the gym has been there for a long time.

The Tenants testified that they spoke to the Landlord about the noise and the Landlord put a note in the bathroom to make people aware of the noise transfer and also restricted the use of the bathroom until after 7:00 am. The Landlord also decommissioned the bathroom and moved it; however, the Tenants stated that it did not help with the noise disturbances. The Tenants stated that no slam toilet seats, and quiet paper towel dispensers would help.

In reply, the Landlord testified that she purchased the 10,000 square foot building in 2012 and built an apartment on one side and a gym/ sports and fitness room was built

in 2012 and 2013. She testified that the gym is a commercial business and she has a business licence and is compliant with the local noise bylaws.

The Landlord submitted that she is a considerate Landlord and she has tried to accommodate the Tenants by having an electrician remove power to the bathroom and getting soft pull towel dispensers. She submitted that she had city bylaw, police, and a building inspector come to the property. She testified that the local bylaw officer informed her that she is exempt from residential noise bylaw. The Landlord provided a copy of the city bylaw which permits operation of the gym prior to 7:00 am provided it does not exceed the sound or noise common for such trade or industry.

The Landlord testified that due to the retractions around covid-19 she had to change the hours of operation from 5:00 am to 10:00 pm to 4:30 am to 8:30 pm and restrict users into ½ hour blocks to facilitate cleaning.

Analysis

Section 28 of the Act, provides 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.

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.

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.

The issue for me to determine is whether or not the Landlord has failed an 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?

Based on the testimony and evidence provided, and on a balance of probabilities, I make the following findings:

I accept the testimony before me that the Landlord has a business licence to operate the gym. While the Landlord owns the entire building, the gym is a commercial operation and not a residential tenant.

With respect to the Tenants' right to freedom from unreasonable disturbance, I have considered whether or not the noise disturbances coming from the gym amount to substantial interference with the ordinary and lawful enjoyment of the premises.

I am mindful that the Tenants knew there was a gym located below and adjacent to them when they entered into the tenancy agreement. I find that the entitlement to quiet enjoyment does not mean freedom from all noise or disturbance. In a residential property with multiple units it is reasonable to expect to hear some noise transfer. The same applies to the case before me where a commercial gym is located adjacent to residential property. Its reasonable to expect that the Tenants will hear noise from the gym, including situations where they will experience temporary discomfort or inconvenience during the gyms regular business hours. There is insufficient evidence from the Tenants to establish that the noise disturbances exceed the sound or noise common for a gym.

I find that the Landlord responded to the Tenants concerns about noise and is alive to the issue of noise transfer, and I find that she took steps to attempt to reduce the transfer of noise.

After considering the totality of the evidence, in the circumstances, I find that the noise disturbances are not unreasonable. I find that the Landlord has not breached the Act by failing to protect the Tenants' right to quiet enjoyment.

The Tenants application requesting an order for the Landlord to comply with the Act, regulation or tenancy agreement is not successful and is dismissed.

Conclusion

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

The Tenants application requesting an order for the Landlord to comply with the Act, regulation or tenancy agreement is not successful and 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: January 20, 2021

Residential Tenancy Branch