



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

The tenants seek a compliance order and monetary compensation, claiming the landlord has:

- a. failed to protect their right to quiet enjoyment of the premises,
- b. failed to approve in writing the installation of an air conditioner,
- c. failed to attend to an ant infestation in a timely manner,
- d. failed to attend to electrical and fire safety issues in and around the building.

In their documentary filing they have formed their claim under five issues;

1. Contract unilaterally altered by landlord,
2. Unreasonable noise,
3. Ants,
4. Building safety, and
5. Contract terms.

The listed parties and representatives attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

During the preliminary portion of the hearing on January 7, the parties were informed that this arbitrator would not make a determination about the meaning or effect of any term in the tenancy agreement unless it was related to an issue raised by the tenants' claim. As it turned out, no particular contract term required interpretation or close

examination. Nor was it necessary to make any ruling about whether the contract had been unilaterally altered by the landlord.

The most significant issue is whether the tenants were being unreasonably disturbed by noise believed to be emanating from the suite above them. If so, did the landlord act in a reasonable and timely manner to have the unreasonable disturbance discontinued? If not, what is a reasonable measure of damages?

A second issue relates to the matter of ants and whether the landlord attended to their eradication in a timely manner after being notified. If not, then what is a reasonable measure of damages?

Similarly, did the landlord fail to grant the tenants permission for a window-mounted air conditioning unit? If so, what if any loss or expenses did the tenants suffer as a result?

A fourth issue relates to the tenants' claim, inferred from their list of compensation, that they should be compensated for all the personal items they had to dispose of in order to move into this apartment. This claim is based on the tenants' feeling that the landlord's representative represented the rental unit to be a quiet one and so they disposed of their excess belongings and rented it. It was not a quiet rental unit and so they disposed of their items in vain and should be entitled to the value of those items.

Lastly, there is an issue about building safety and whether or not the landlord is complying with fire and electrical standards.

Background and Evidence

The rental unit is a two-bedroom, ground floor apartment in a relatively modern looking 110 plus unit apartment building. There is a written tenancy agreement. The tenancy started May 1, 2020 after the tenants inspected it in late April. The monthly rent is \$1600.00, due on the first of each month. The landlord holds an \$ 800.00 security deposit and an \$800.00 pet damage deposit.

The tenants moved in about May 9. The tenant JW testifies that they had been promised quiet enjoyment by the leasing agent who negotiated the tenancy with them. She indicates they had wanted a top floor apartment in order to avoid noise but settled on the ground floor apartment in question as the result of noise assurances from the leasing agent, though an April 13, 2020 email from the tenants to the landlord indicated that a ground floor unit would make it easier to take their dog outside. They had moved

from their previous accommodation because of the unreasonable level of noise infiltrating their rental unit from the suite above.

A few weeks after moving in the tenants say they were disturbed by the sound of chairs being dragged, stomping and other noises, that often carried on past midnight. In her materials the tenant JW notes that her husband JH is “incredibly sensitive to noise and has trouble sleeping.” They made a complaint to the landlord about the noise on about May 21 and another around June 9th.

In her testimony JW stated they could hear the shower going in the suite above them, even the lapping of water in the tub, as well as “stomping.”

In his testimony the tenant JH stated that he was disturbed by heavy steps from above; more a vibration than a noise. As well, he could hear the dishwasher, the washing machine, the frequent heavy dropping of items on the floor and light items like a foosball from a foosball game. He could hear the drop of a screw in a bedroom, a heavy rolling sound, drawers slamming, the ceiling creaking, and a headboard thumping during sex.

Unbeknownst to the tenants, the landlord had sent a warning letter on June 9 to the couple living above this rental unit, telling them there had been excessive noise, heavy walking, stomping and banging coming from their suite for weeks. One of the tenants above quickly responded that the noise was not coming from their suite and certainly not during the night. He asked where the complaint was coming from so that they could meet and try to determine the source of the noise. The landlord declined to say.

The applicant tenants complained again about ongoing noise on July 16. A second warning letter was sent to the tenants above indicating that their neighbours had been subjected to “some very loud noises (excessive stomping, dropping of heavy items and slamming of drawers)” from late night until going to midnight. It was not indicated whether the tenants above responded, however, they had previously given notice to end their tenancy and moved away by July 31. The resident manager JS and his sister then moved into the suite above.

According to the tenants’ written document the noise continued through July and August. They again complained to the landlord (JS, the resident manager) and met with him on September 2. They knew there was a new tenant upstairs but did not know it was JS. He did not tell them. They complained that the noise from above regularly kept them awake and went on past 1:00 a.m. and before 6:00 a.m. The tenants written document says that after their meeting with JS, the noise increased and included

sounds like jumping rope and slamming of weights. Sometimes they heard a mechanical sound, like something hitting bare floor. They discussed having carpeting installed upstairs and whether or not the tenants could demand it under the terms of the tenancy agreement.

On September 23 the tenants met with the property manager DI, who indicated to them that the resident manager JS was living in the suite above them. The tenants demanded, perhaps not for the first time, that the landlord hire a sound engineer.

The tenants produced three sound recordings of the noise said to have been coming from the apartment above. On cross examination the tenant JH indicated he had not provided the landlord with a copy of the recordings on advice of legal counsel.

The tenant JH referred to notes he had kept of the sound disturbances he endured in January 2021. He also referred to decibel meter readings of the noise that he'd taken prior to making this application.

In response to the tenants' evidence counsel for the landlord referred to an unsigned, typed statement purporting to be from the tenants occupying the apartment above during May, June and July 2020. The statement indicates that the couple were not home very often and that both worked during the day most of the week. They say they had been sleeping at the times complained of and did not themselves hear any noise, though a lot of noise generally came from the adjoining street. They had sometimes heard noise like stomping or the dragging furniture from units above and beside them but it was not enough that they felt they needed to complain about it.

The building manager JS testified that he had carpeting in the living room and bedroom in the suite above and produced photographs of it. He says he received the tenants' complaint about ants and "started the process" of dealing with it. He says that if there was any delay it was caused by scheduling difficulties with the tenants, who insisted on being there for any entry by the landlord or the exterminator.

JS testified that he is up at 7:00 a.m. on workdays and out of the apartment by 8:00 a.m. to work in the office, then home by 5:00 or 6:00 p.m. On being questioned by the tenant JW, he stated no one else complained about ants and that he lives with his sister in the two bedroom apartment and that she works outside the home all day, seven days a week. He stated he does not have guests or stay overs.

The landlord's leasing agent AH testified and said that the tenants did not say they needed a "quiet" unit, but a "quieter" unit than the one they had been living in. She was unaware of any noise sensitivity either tenant might have had. She was aware that the building manager had reported that the prior tenants had not made any complaints about noise. She stated that the building was of wood-framed construction.

Analysis

Unreasonable Noise

Section 28 of the *Residential Tenancy Act* (the "RTA")

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.

(emphasis added)

Even though the tenants' audio tapes were apparently not exchanged prior to this hearing, they were played during the hearing. None of the three tapes reveal any particular noise but for what might be a thump. Similarly, the decibel recordings submitted by the tenants do not indicate that they correspond to any particular noise or sound. I find neither to be of any objective assistance.

The tenant JH started keeping notes of incidents in January 2021. They are of little assistance in establishing the actual disturbances alleged to have been occurring prior to this application.

The noises complained of are in the nature of household noises: heavy walking, moving of chairs, the sound of plumbing, the occasional dropping of an item. The tenants refer to persistent "stomping" and imply that it was and is being done to disturb them. I am unable to conclude that the original tenants above were stomping their feet on the floor in an effort to annoy or that the replacement tenants, JS and his sister, immediately adopted the same tactic upon moving in August 1. It is not likely or reasonable.

All in all, even if I accept the tenants' narrative, what the tenants are complaining about I find to be the normal household noises being made in the suite above them. Normal household noises are not generally an "unreasonable" disturbance but are the sounds generally associated with living in an apartment building, where a floor is somebody else's ceiling.

It is concerning that such minor noises as "a screw dropping" were apparently audible in the tenants' rental unit. This might be indicative of cheap or even substandard construction. However, there is no evidence to indicate that this building was built other than in accordance with the codes then in effect.

In any event a landlord is not directly responsible for the disturbance caused to one tenant by another in the building. A landlord becomes responsible in situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct them.

In this case, the landlord appears to have acted promptly in warning the tenants above that there had been complaints about noise. When the tenants continued to complain even after the resident manager moved in above, it was not unreasonable for the landlord (and its employee JS) to be skeptical. The tenants did not know about their new neighbours, yet the same complaints continued.

There is a question whether JC should have informed the tenants that he was now living above them. On the one hand he could be seen as investigating allegations made against him, which would be a conflict of interest. On the other hand, if it was apparent to him that there was no noise coming from his new accommodation, as it would if, as he says, he and his sister were gone all day, then his failure to announce he was the upper tenant is more understandable. Given the findings above, this question does not require an answer.

In summary, I find the tenants have not proved a breach of their entitlement to quiet enjoyment.

I find that the tenants did not make the landlord aware of any special needs or disabilities and particularly that the tenant JH was sensitive to noise or needed to be accommodated in that respect.

I find that it has not been proved that the landlord made representations about the quietness of the rental unit to the tenants, other than, possibly, an assertion that the previous tenants in the rental unit had not made any complaints about noise. That assertion has not been shown to be untrue.

I dismiss the tenants' claim for breach of the covenant for quiet enjoyment, including any claim for the value of personal items the tenants disposed of in order to move to this rental unit.

Air Conditioner

There was little verbal testimony about this item of the claim. From the written material it appears that the tenants wanted to install a window mounted air conditioner. They may have received verbal approval to do so, but they determined that the tenancy agreement required written approval. They wrote to the landlord requesting written approval but did not receive a response. From this they assumed there was no approval and so acquired a portable air conditioner instead.

There was no evidence that a portable air conditioner was better or worse at its job than a window mounted unit.

I find that the tenants were hasty in concluding written approval had been denied. A reasonable person would have followed up their written request before reaching such a conclusion and I dismiss this item of the claim.

Ants

On all the evidence I find the landlord's response to the tenants' complaint of ant trouble to have been reasonable and timely. After the first complaint, the tenants informed the landlord by email on June 1 that they had set traps and that "it had been better the last few days..." When the tenants again raised the issue, this time with DI in September, the matter was quickly attended to. I need not determine whether any delay might have been caused by scheduling difficulties with the tenants.

I dismiss this item of the claim.

Electrical and Fire Safety Issues

The tenants refer to the lack of fire exits/escape routes and the installation of inappropriate electrical outlets. In order to prove these items an arbitrator would need

to be shown what the relevant laws or codes were and that they had been breached. The tenants did not provide this evidence. As stated at hearing, matters involving fire codes and electrical codes normally require an expertise that an arbitrator does not possess. As well, local government normally employs its own experts in both fields: fire safety inspectors and electrical inspectors. Those persons have power to order a landlord to comply.

I find that, technically, the tenants have not proved a breach of any fire or electrical code or any loss resulting from such a breach. They are free to contact and make use of the relevant inspector. If the landlord fails to comply with the order of an inspector and the tenants suffer damage or loss as a result, they are free to make another application for compensation for their damage or loss.

Other

During the hearing the tenants referred to a lack of keys for certain areas. The landlord indicated that the rear gate was not operable by any of the building tenants but that if the tenants' sliding glass door had a keyed locking mechanism on the outside of it, then the landlord would provide the tenants with a key.

The tenants' materials make reference to damage to two pictures. That matter was not addressed in testimony during the hearing and has not been proved. It is dismissed.

Conclusion

In result, the tenants' 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: January 13, 2021

Residential Tenancy Branch