Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act and provide the tenant with the quiet enjoyment he is entitled to pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 10:13 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. The tenant and his advocate ("**IC**") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing and Notice of Reconvened Hearing. I also confirmed from the teleconference system that the tenant, IC, and I were the only ones who had called into this teleconference.

This matter was reconvened from a hearing on November 23, 2020. The landlord did not attend that hearing either. I issued an interim decision following that hearing setting out the reasons for adjournment. I will not repeat those reasons here.

The IC testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on September 28, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on October 3, 2020, five days after IC mailed it, in accordance with sections 88, 89, and 90 of the Act.

Following the interim hearing, on November 26, 2020, the Residential Tenancy Branch provided copies of the notice of reconvened hearing and the interim decision to the landlord at the email address provided by the tenant. I find that the landlord knew or ought to have known about this hearing and proceeded in its absence.

Preliminary Issue – Amendment of Application

At the outset of the hearing, IC asked if she was permitted to amend the application to add a monetary claim. In the interim decision I wrote:

> The tenant may not amend his application.

Additionally, Rule of Procedure 4.2 states:

> **4.2 Amending an application at the hearing**
> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The addition of a monetary claim could not have reasonably be anticipated by the landlord. The application makes no reference to the tenant seeking compensation for the landlord's alleged breach of the Act. Additionally, as I disallowed amendments in the interim decision, the landlord could not reasonably expect me to reverse this decision at the hearing.

As such, I decline to permit the tenant to amend his application to include a monetary claim.

Issues to be Decided

Is the tenant entitled to:

1) an order that the landlord comply with the Act;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of his and IC's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The rental unit is located on the third floor of a multi-storey residential property (the "**building**"). The tenant moved into the rental unit in May 2011. He entered into a tenancy agreement with the prior owner of the building. At some point in 2018, the building was sold to new owners, and the current landlord took over the tenancy agreement. Current monthly rent is $610.50 and the tenant paid a security deposit of $287.50 at the start of the tenancy, which has not been returned to him.

The tenant testified that new neighbours moved into the rental unit directly above his own on October 15, 2019 (the "**upstairs neighbours**"). He testified that since moving in, the upstairs neighbours have caused significant disturbances to him, to the point where he felt "physically assaulted" by the noise they were creating.

The tenant testified that the disturbances are mainly heavy or “energetic” footfalls, bordering on stomping, and frequent dropping of heavy objects. He testified that he hears these sounds from when he wakes up (which he testified varied between 7 am and 11 am), throughout the day, and into the evening. He testified that, in the last six weeks, the noises continued ~~until~~ past 10 or 11 pm, whereas before they usually stopped before 10 pm.

The tenant characterized the noises ~~in the evenings~~ on the evening of October 2, 2020 as “drumming” sounds.

The tenant testified that the upper unit was occupied by other tenants earlier in his tenancy and that he has not had any issues with noise from the rental unit above his prior to the upstairs neighbours moving in.

The tenant kept a noise log which he read from during the hearing as part of his testimony. He did not submit it into evidence. The noise log starts in September 2020 and continues to late November 2020. In it, the tenant recorded loud noises occurring throughout the day, and on some it recorded the sound of heavy items being dropped over 20 times.

The tenant acknowledged that the building has thin floors, and he stated that he understood that a certain level of noise from his neighbours is to be expected. However, he testified that the noises caused by the upstairs neighbours goes well beyond this level.

The tenant reported these issues to the landlord. In a letter from IC to the landlord dated August 7, 2020, IC wrote:

> [The tenant] has been experiencing ongoing unreasonable noise from the tenants above him which to date has gone unresolved. He is a long term tenant who has lived in this suite for many years without noise issues from above, the only factor that has changed is the new tenants in the suite above him. This demonstrates the issue is not with the sound proofing of the building, rather the lack of consideration from the tenant/s above for their fellow neighbors.
>
> While some level of noise is expected in a multi dwelling building, it should not be at a level that unreasonably disturbs the quiet enjoyment of others. [The tenant] describes the tenants are stomping when walking and moving or dropping heavy objects on an ongoing basis. This is not in keeping with an individuals quite enjoyment.
>
> [The tenant] is also requesting his kitchen faucet be replaced or repaired, it has been leaking a significant amount for some time now.

> [The tenant] has made both of these requests to you previously, yet to date there has been no action taken. We respectfully request the repair or replacement of the old faucet and the upstairs neighbor be dealt with as soon as possible. Should these issues continue beyond September 15th 2020, I will assist [the tenant] in exercising his right and take these matters to the Residential Tenancy Branch for an order to comply.

IC testified that she did not receive a reply to this letter from the landlord, but that the repairs requested there were completed by the landlord in early September 2020 (less than a month after the letter was sent).

The tenant testified that he spoke to the building manager about the noise issues on at least one occasion, and that the building manager told him that he would speak to the upstairs tenants. There was no discernable change in the noises caused by the upstairs tenants following this request.

The tenant testified that sometime after making this request, he spoke with the upstairs neighbours about the noise, and they told him that the building manager had never spoken to them.

The tenant also submitted a letter sent to the landlord on July 16, 2019 (three months prior to the upstairs tenants moving into the building). It discusses other issues, unrelated to the upstairs tenants. I will not recount its contents, as they are not relevant to this application.

The tenant argued that the noises caused by the upstairs tenants are significantly depriving him of his quiet enjoyment of the rental unit. He testified that the constant noise leave shim feeling irritable and angry, and he has become afraid to interact with other people. As stated above, he testified that he feels “physically assaulted” by the reverberations of the sounds created by the upstairs tenants.

The tenant seeks an order that the landlord comply with its obligations under section 28 of the Act to provide him with quite enjoyment of the rental unit.

Analysis

Section 28(2)(b) of the Act states:

> **Protection of tenant's right to quiet enjoyment**
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> […]
> (b) freedom from unreasonable disturbance;

RTB Policy Guideline 6 states:

> 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.
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> 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.
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> 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.

I accept the tenant's uncontradicted testimony that the noises emanating from the upper unit have unreasonably disturbed him, both in their volume and in their frequency. I find that the noises described exceed those that could reasonably be expected when living in a building with neighbours upstairs.

I also accept his testimony that he verbally asked the building manager to address the problem with the upper neighbours, but that, to his knowledge, this was never done. I also find that IC demanded that the landlord take steps to address the tenant's complaint, but that she was not advised of any steps being taken, and no noticeable change in the disturbances occurred after the demand was made.

Based on this, and in the absence of evidence to the contrary, I find that the landlord has was aware (or ought to have been aware) of the disturbances experienced by the tenant and failed to take reasonable steps to provide him with quiet enjoyment.

The tenant has not applied for any compensation in connection with this application. He has only sought an order that the landlord comply with the Act. As such, I order that the landlord provide the tenant with quiet enjoyment of the rental unit. I order that the landlord undertake an investigation as to the causes of the noises coming from the upper unit that the tenant has complained of, and take all reasonable steps to eliminate the noises, or reduce them to reasonable levels. Such steps may (but do not necessarily) include, speaking with and/or issuing a warning letter to the upper neighbours, attending the rental unit to observe the disturbances first-hand, making alteration to the rental unit or the upper unit to reduce noise transference, and, as a last

resort, ending the tenancy of the upper neighbours (if their actions, and not deficiencies in the building, are the root cause of the unreasonable disturbances, and they fail to alter their conduct).

I also order that the tenant to cooperate with all reasonable requests made by the landlord when it is conducting its investigation, including, but not limited to, granting the landlord access to the rental unit (after having received notice in accordance with the Act), making audio recordings of the noise, granting the landlord access to the rental unit to make necessary alterations, and meeting with the upper neighbours and a representative of the landlord to discuss possible ways to resolve this matter.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, he may recover the filing fee from the landlord.

Conclusion

Pursuant to section 72 of the Act, I order that the landlord pay the tenant $100, representing the return if his filing fee.

I order the tenant to serve a copy of this decision and attached order on the landlord, in accordance with the Act, and on the building manager.

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: February 11, 2021

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(C) OF THE RESIDENTIAL TENANCY ACT ON MARCH 15, 2021 AT THE PLACES INDICATED ON PAGE 3.