



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On January 26, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an order for the Landlord to comply with the Act. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issue to be Decided

Should the Landlord be ordered to comply with the Act, pursuant to section 28 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on November 15, 2018 and continued as a month-to-month tenancy. The rent is \$1,480.00, the Landlord collected and still holds a security deposit in the amount of \$740.00.

The Tenant submitted that since a new occupant moved into the unit above hers, in July 2020, there has been excessive noise that has included banging, moving furniture around, loud music and the sound of loud machinery.

The Tenant has spoken to the occupant in the above unit; however, has not had any cooperation and the Tenant and her family still suffer from the ongoing noise disturbances.

The Tenant submitted correspondence between herself and the Landlord and stated that the Landlord is not taking her complaints seriously and does not seem to be interested in helping to address the situation.

The Tenant stated that she has not been able to capture a recording of the excessive noise or provide an example of the unreasonable level of noise as evidence.

Regardless of past communications with the Landlord, the Tenant wishes the Landlord's involvement in attempting to address the issue of excessive noise with the upstairs occupant and will allow the Landlord into the rental unit to listen when the noise is occurring.

The Landlord submitted that she has been responsive to the Tenant's requests, has talked to the occupant in the unit above the Tenant's and has not found that there has been excessive noise. The Landlord did acknowledge that, at one point, she listened to the volume level of the occupant's music and suggested that he turn it down a bit.

The Landlord submitted the dates of the Tenant's complaints and testified that the occupant had provided information to say that he was not present in the unit during some of the days that the Tenant complained. The Landlord stated that there are three units that overlap with the Tenant's rental unit and that some of the noise may be coming from the other units.

The Landlord stated that she is willing to assist the Tenant to determine where the noise is coming from and if it is excessive. The Landlord requires the cooperation of the Tenant and to be allowed into the Tenant's rental unit when it is happening.

The Landlord acknowledged that she did not follow-up with the Tenant after some of the investigations that were conducted into the Tenant's complaints.

Analysis

Section 28 of the Act outlines the tenant's right to quiet enjoyment and states that the tenant is entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference."

The Residential Tenancy Branch website provides the following guidance:

A landlord must provide quiet enjoyment to all tenants. Upon getting a disturbance complaint from a tenant, the landlord must take steps to fix the problem.

For example, a landlord may need to speak to a tenant about noise if it bothers neighbouring tenants. In this type of a situation, the landlord should:

- *Talk to the disruptive tenant(s) about the problem*
- *Let the tenant who complained know what's being done to address the issue*
- *Follow up with the disruptive tenant in writing (e.g. a "breach letter") to explain:*
 - *The details of the problem*
 - *The reasonable amount of time allotted to resolve the problem*
 - *What may happen if the tenant doesn't fix the problem*

Upon review of the parties' evidence, I find that the Landlord has been taking reasonable steps to follow-up on the Tenant's complaints of excessive noise; however, could improve on her communication with the Tenant about what is or has been done to address the issue.

I don't find that the Landlord should be ordered to follow the Act. Rather, I encourage both parties to collaborate to identify if there is a problem and work towards a mutually beneficial solution.

One of the main issues for the Tenant is that she is being bothered by, what she describes as, excessive noise coming from a unit above her rental unit. However, the Landlord has not been able to experience the excessive noise herself or have the noise confirmed by anyone else.

During the hearing, the Tenant invited the Landlord to attend her rental unit when the noise is occurring. If the Landlord is available between Mondays and Fridays, the Landlord agreed that she would attend.

Another suggestion would be to identify a neutral party, possibly another occupant of the building, who might be available to attend the Tenant's unit on short notice and provide feedback and/or witness the noise levels.

I find that the Landlord is willing to assist and agree with the Landlord that she must determine if there is an issue before issuing any warning letters to other occupants.

Conclusion

Although I am not “ordering” the Landlord to comply with the Act and as such, am dismissing the Tenant’s Application; I do remind both the Tenant and the Landlord that section 28 of the Act does establish the Tenant’s right to quiet enjoyment and with that, places a responsibility on the Landlord to do their best to ensure the Tenant’s freedom from unreasonable disturbance.

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: April 21, 2021

Residential Tenancy Branch