



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

Is the tenant entitled to the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;

The tenant attended with WL, his spouse, with whom he resides in the unit. Together, they are referenced as "the tenants". The landlord attended as represented by the property manager and agent KS and building manager, and agent LB ("the landlord").

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The landlord acknowledged service of the Application for Dispute Resolution and evidence package. The landlord submitted no documents. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. All present confirmed they are not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant submitted a copy of the tenancy agreement. The parties agreed upon the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	June 10, 2019
Date of ending	Current Tenant
Length of tenancy	26 months
Monthly rent payable on 1 st	\$995.00
Security deposit	\$425.00
Pet deposit	No
Date of Application	April 10, 2021

The tenants testified that the unit is a 1-bedroom apartment in a multi-unit building.

The tenants requested that the landlord be ordered to comply with the Act by providing the tenants with quiet enjoyment of her unit.

The tenants submitted considerable documents and media files in support of their claim. They also gave lengthy testimony in a 76-minute hearing. Not all this evidence is referenced. I refer to only key, relevant, and admissible facts and testimony.

The tenants testified as follows:

1. Shortly after they moved in, they noticed disturbing sounds coming from the unit immediately overheard. They do not know the name of the tenants in that unit who is referenced as “the occupants in overhead unit” and that unit is referenced as the “apartment above”.
2. The tenants wrote the landlord in November 2019. A copy of the letter was submitted as evidence and the landlord acknowledged receipt. The tenants

informed the landlord that the occupants in overhead unit were conducting a flooring business out of the apartment above which caused unpredictable and loud noise throughout the day and night. They also had their business employees staying with them who came and went noisily with what sounded like work boots. The sound of running water came from the unit for hours at a time. The tenants reported that occupants in overhead unit shook carpeting over the balcony causing dirt and debris to fall onto the tenants' deck.

3. The letter of complaint stated in part as follows:

[W]e understand the meekness of the construction of our apartment so a certain amount of noise is acceptable but our neighbors upstairs, (directly above us) Have superseded there noise levels a few times over! The gentleman has a painting and plaster company and my understanding is contracts out work for his projects and will bring over his workers to sleep overnight to save them money.

Upstairs in the evenings is like grand central station a constant rumble and bang of continual traffic till the late evenings sometimes into the wee hours of the morning. The renters two large guys are simple loud, you hear them speaking on the other side of the apartment big voiced and gregarious. The tall guys the supervisor and I understand the authority voice thing, all day and into the night.

Along with noise level from 5 am till 12 pm, these guys have some nasty habits too like shaking their carpets over the balcony, guess were all the (hairs) nail clippings, shop dust, plaster etc. end up. On our balcony and into our apartment, all the guy needs to do is buy a vacuum cleaner.

For example, my wife [name] was studying a couple days ago and had the balcony door open for some fresh air and they shook their carpet and she was hit with a disgusting cloud of dust and unmentionables.

We have tolerated these intrusions since they moved in, live and let live and asked them a few times to calm things down, they don't seem to have much respect for folks that aren't there style of people and keep tromping around like baby elephants, both guys are around 280 to 300 lbs.

But it's really unsettling it'll be quiet one min and all of a sudden BANG, Bang, BOOM, trompt tromprt trompt you can't wind down and sleep properly with that, its like being inside a drum. We wake up when they wake up and go to sleep when they do!

We also have the sound of water constantly running, we have checked our toilet it's not leaking, it's in the walls, in the bathroom area, not a shower running noise either it's something else like bathtub or pool of water somewhere not sure where its coming from but the water is constantly running.

On a final note, we do not want too to have someone removed from there apartment!

Rentals are really hard things to find nowadays, we just want the guy to calm down upstairs by 9-10pm so we can sleep and stop shaking the #@#\$% carpets dust into our apartment.

4. The tenants testified that the loudest sounds were "subsonic". That is, the male tenant said the sound "goes right through you – I developed heart palpitations – it would be quiet one minute and then, boom."
5. Both tenants said they had ongoing trouble sleeping from the upstairs noise because a period of silence was often interrupted by the loud sound of something very heavy dropped on the floor, followed by a dragging sound.
6. The female tenant stated that she worked shift work. When she went to bed at midnight, she would awaken an hour or two later with the startling, loud, dropping-dragging sound. She stated she thought the upstairs occupants must "work all the time".
7. The sound shook the blinds and walls. The tenants frequently straightened pictures askew from the vibrations from upstairs.
8. The noise persisted and the tenants wrote the landlord many times asking that the landlord please do something. The tenants submitted copies of correspondence from January, May 5, August 29, 2020, and April 1 and 21, 2021.
9. The tenants stated that the noise has somewhat declined but it generally continues as before. That is, the tenants hear work boots, heavy objects dropping then being dragged, and water running for many hours at a time.

10. The tenants submitted a copy of an ad stating that a named business operates in the overhead apartment and is open for business from 9 AM to 5 PM, Monday to Friday. The business is described as a “Tiling & Tile Contractors” which provides and installs various flooring.
11. Many times, the tenants – either singly or together – went to the upstairs occupant to ask that they keep the noise down. They stated the occupants would sometimes open the door, but never wide enough to see inside. After one such visit, the upstairs occupant said that if the tenants complained again, he would call the police.
12. The tenants stated that another tenant has also complained several times which the landlord acknowledged.

The landlord acknowledged receipt of the tenants’ considerable correspondence regarding the noise. They testified they went to the upstairs apartment “3 to 5 times” to ask that the noise be kept down; they did not enter the apartment and did not see inside. They have not carried out an inspection.

The landlord stated they sent the upstairs occupants two letters of warning dated November 27, 2020 and April 3, 2021. In the last letter, the upstairs occupants were warned they could be evicted.

The landlord stated that this was “an unfortunate conflict – we aren’t always able to find a solution”. They maintained there was nothing they could do about the situation beyond what had already done. The landlord stated they have not issued the upstairs tenants a notice to vacate and have no plans to do so.

The tenants requested that the landlord comply with the landlord’s obligation to provide quiet enjoyment.

The landlord requested the application be dismissed.

Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision. The hearing last 76 minutes and included considerable testimony.

Credibility

I have considered the evidence and testimony. I found the tenants believable, sincere, articulate, and forthright. Their narrative accords with the submitted evidence. Where their version of events differs from the landlord's, I accept the tenants' version as the more reliable as they lived in the unit and experienced the noise firsthand. I give most weight to their testimony which was supported in all material respects by submitted evidence.

Order that the Landlord Comply with the Act and Provide Quiet Enjoyment

Section 62 grants authority to make any order necessary to give effect to the rights, obligations, and prohibitions under the Act. The section states in part:

Director's authority respecting dispute resolution proceedings

62(3) *The director may make any order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

As part of the tenancy agreement, tenants have a right to peace, quiet and privacy in their homes – a right that comes from the common law principle of quiet enjoyment.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

22. 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]

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* which states as follows:

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.

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.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA (Policy Guideline # 16).

[emphasis added]

However, the tenants are not making a claim in this hearing for damages although they continue to have the right to do so. The tenants explained their present claim is for an order that the landlord provide quiet enjoyment from this time onward. They requested that the landlord be ordered to assure that they have quiet enjoyment so that they may go about their work, activities, and sleep without unreasonable disturbance from noise. They explained that they like the location of the unit and want to continue to live there.

I accept the tenants' evidence in all respects. I find that the unreasonable and ongoing disturbance from noise has gone on since June 10, 2019 when they moved into their

unit and is caused by the occupants in the overhead unit. I find the tenants' version of events credible and accept their testimony that the noise resulted in loss of peace, quiet, and sleep. I find the tenants have a genuine and well-founded concern that their loss of quiet enjoyment will continue.

As acknowledged, I find the landlord was aware of the interference or unreasonable disturbance and received the many letters of complaint. I find that the tenants clearly, consistently, and repeatedly complained to the landlord about the occupants in the overhead unit. The tenants lived in the building and provided the landlord with believable evidence and first-hand reporting.

Once a landlord is aware of the interference or unreasonable disturbance, the landlord has responsibilities to take steps to fix the problem. The landlord may speak to the disruptive tenant, provide a notice in writing of the breach, set out details, a reasonable time to resolve the problem, and consequences of failure to adequately respond.

I find the landlord's actions were futile in restoring the tenant's right to quiet enjoyment. I find that the landlord's efforts were inadequate, ineffective, and unreasonable given the circumstances and the landlord's obligations.

I therefore find the tenants have met the burden of proof on a balance of probabilities that they have experienced loss of quiet enjoyment since June 10, 2019. I find that the landlord was aware of the serious disturbances and has not taken adequate steps to resolve the problem. I find the noise continues without abatement and the issue is ongoing.

I accordingly order that the landlord immediately provide the tenant with quiet enjoyment of the unit pursuant to section 22.

I also order that the tenant may apply for damages or compensation for the loss of quiet enjoyment pursuant to section 67 of the Act.

Conclusion

I order that the landlord immediately provide the tenant with quiet enjoyment of her unit pursuant to section 22 of the Act and the tenancy agreement.

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: August 18, 2021

Residential Tenancy Branch