



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On April 21, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. The Landlord and Tenant attended 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. The parties were informed that recording the hearing is not permitted.

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

The Tenant agreed to amend her application to include the proper legal name of the Landlord. The Tenant's application is amended accordingly.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulation, or the tenancy agreement?

Background and Evidence

The Landlord and Tenants both testified that the tenancy began on March 25, 2020 on a month-to-month basis. Rent in the amount of \$320.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$200.00.

The Tenant testified that the rental property is an older two floor residential building containing 48 rental units that have hardwood floors.

The Tenant testified that she started making complaints to the Landlord about noise disturbances within a month of her moving into the rental unit.

The Tenant testified that in September 2020 she made multiple complaints to the Landlord regarding noise disturbances primarily related to an occupant who lived directly above her. She testified that the occupant has a guest staying with him who eggs him on. She testified that she met with the Landlord to see if they could move the occupant living above her to another room and the Landlord responded by saying "no". She stated that the occupant above her is disturbing her quiet enjoyment.

The Tenant stated that the occupant above her is stomping, dragging a chair on the floor, and the floor is creaking.

The Tenant also stated that she is being harassed by up to 20 people living on the property.

The Tenant stated that there is an auxiliary door that disturbs her when used by other occupants. She stated that when people use the door between 11 pm and 8 am it wakes her up. She stated that she believes people are using the door to purposely annoy her.

The Tenant was asked how the Landlord responded to her complaints and she replied that the Landlord sent the occupant living above her some letters. She stated that the Landlord has not followed up and the Landlord is allowing other occupants to bother her. She stated that the Landlord did not take any action regarding an occupant named K.S. who is bothering her.

The Tenant stated that her concerns could be resolved if the Landlord permitted her to move to the second floor. The Tenant then stated that she has a transfer request in with another housing organization.

The Tenant testified that she has contacted the police who responded to her by saying that this is a tenancy issue and that they do not appreciate her calling them all the time.

The Tenant testified that last summer when she was notifying the Landlord about noise disturbances one agent told her to not contact him anymore and another agent of the Landlord blocked her phone number. She testified that she was able to make her complaints to the Landlord Ms. R.M. who was present at this hearing.

In response to the Tenant's testimony, the Landlord provided testimony that the residential property was built in 1972 and has two floors and contains 49 rental units with linoleum flooring.

The Landlord testified that the Tenant reached out to them regarding the occupant living above her on three occasions. The Landlord testified that they responded to the Tenant's complaints by sending letters to the occupant regarding noise and quiet enjoyment. The Landlord provided copies of three letters they sent to the occupant in August 2020 and November 2020. The Landlord also provided a copy of a November 23, 2020 letter sent to all residents as a reminder about making noise.

With respect to the door, the Landlord testified that the door is an exit door, and they cannot restrict people from using it. The Landlord testified that they did post a notice on the door stating, "do not let door slam" and the Landlord has replaced the notice when it was removed.

The Landlord stated that a mental health organization reached out to them in response to a complaint received from the occupant living above the Tenant. The occupant alleged that the Tenant is harassing him.

The Landlord stated that any decision to permit the Tenant to move to the upper floor would be up to the board of directors.

The Landlord stated that they have never blocked the Tenant's calls, and that in many of her emails she is not posing questions that require a response.

Analysis

Section 28 of the Act, states 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.

The issue for me to determine is whether or not the Landlord has failed their obligation to protect the Tenant's right to quiet enjoyment. Do the noise disturbances amount to substantial interference with the ordinary and lawful enjoyment of the premises?

Based on the above, the testimony and evidence before me, and on a balance of probabilities, I find as follows:

I accept the Tenant's testimony that she has been disturbed by noise coming from the occupant living above her and by an exit door. The rental unit is located in an older multi-unit building with linoleum or wood floors. The Tenant's testimony included that she is hearing noise from the above floor creaking, stomping, and a chair. I find that a tenants entitlement to quiet enjoyment does not mean freedom from all noise or disturbance. I find that it is reasonable to expect to hear some noise transfer in an older multi unit building with such flooring. I find that the noise coming from above are likely magnified by the nature of the building and not restricted to deliberate acts to intentionally disturb the Tenant.

I am mindful of the Landlord's evidence that the Tenant is harassing the occupant living above her. It appears to me that the Tenant may not be blameless regarding the dispute with the Tenant living above her.

I find that the Landlord responded to the Tenant's concerns regarding noise disturbances by sending letters to the occupant above her cautioning him about making noise. In addition, I find that the Landlord took steps to try and minimize disturbances to the Tenant caused by the people using the exit door.

With respect to the Tenants submission that she is being harassed by up to 20 people, the Landlord sent a notice to all tenants of the property reminding them about disturbing others.

After considering the totality of the evidence before me, I find that the Landlord has taken reasonable steps to protect the Tenant's right to freedom from unreasonable disturbances. I find that the Landlord has not breached section 28 the Act by failing to take steps to protect the Tenant's right to freedom from unreasonable disturbance.

The Tenant's claim that the Landlord has failed to comply with section 28 of the Act is not successful and is dismissed.

Conclusion

I find that the Landlord has taken reasonable steps to protect the Tenant's right to freedom from unreasonable disturbance.

The Tenant's application 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: September 1, 2021

Residential Tenancy Branch