



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

The landlord did not attend this hearing, although I left the teleconference hearing connection open until the conclusion of the hearing at 10:16 a.m. to ensure the landlord had the opportunity to participate. The teleconference hearing was scheduled for 9:30 a.m. The tenant attended the hearing and was 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. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on August 21, 2021. The tenant 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 August 26, 2021, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the *Act*.

The tenant was informed at the start of the hearing that recording of the dispute resolution is prohibited under Residential Tenancy Branch (RTB) Rules of Procedure

(Rules) Rule 6.11. The tenant was also informed that if any recording devices were being used, she was directed to immediately cease the recording of the hearing. In addition, the tenant was informed that if any recording was made without the director's authorization and used for any purpose, the recording party will be referred to the RTB Compliance Enforcement Unit for of the purposes of an investigation under the *Act*.

Preliminary Issue- Tenancy has ended

The tenant advised that the tenancy ended on August 31, 2021. As such, the request for an order for the landlord to comply with the *Act* has no effect. Accordingly, I dismiss the tenant's application, without leave to reapply.

Issues to be Decided

Is the tenant entitled to the compensation requested?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her 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 a two-bedroom basement suite. The suite is configured with the master bedroom at the back of the suite and the second bedroom and living room at the front of the suite. There is a second basement suite adjacent to the tenant's suite. The property owner/landlord lives upstairs.

There was no written tenancy agreement. The parties entered into an oral tenancy agreement on October 16, 2016. The terms of the agreement were: no parties; no smoking; no pets; rent payable on the first of each month. The monthly rent was

\$1160.00. The tenant testified she and her two children followed all the rules, paid rent on time, and were happy living in the suite up until May 2021, when the homeowner/landlord bought a “guard dog”. Up until May 2021, she testified that they had quiet enjoyment of the suite.

Around the beginning of May 2021, the tenant noticed the landlord building a large doghouse about 1.5 to 2 meters away from her suite’s living room and bedroom windows. When she inquired, the landlord told her that he bought a guard dog for “security purposes”. She found that odd because there were no security issues that she was aware of. In the course of the conversation, she voiced concerns about the proximity of the doghouse to the bedroom and living room windows and about potential noise from a barking dog. She also inquired about the “no pet” policy as she had asked about having a small dog for her family and was told “no”. The landlord brushed off her concerns and responded, “I am the owner of the house and land. You are the tenant. You must follow my rules.”

The 9-month-old German Shepherd arrived early May. The dog was tethered outside day and night. From the moment the puppy arrived, he barked constantly. Initially, the tenant thought the dog barked because he was unfamiliar with his new home and the barking would lessen over the coming weeks. The barking, however, did not diminish and, in fact, worsened. Around the one month point of “non-stop barking” the tenant approached the landlord about the noise asking that the landlord please do something about the barking dog especially at night and early in the morning. She told the landlord that she and her two sons were unable to sleep because the dog’s continuous barking kept them up all night and barked early in the morning.

The barking continued and the tenant again approached the landlord again telling him the constant barking was now affecting her sons’ abilities to concentrate at school and a few times the boys were so tired, they missed school. She also told the landlord that her ability to focus at work was impacted, and she missed some workdays. She also

explained that the incessant barking was affecting her and her sons' mental health. She was irritable, anxious, and stressed.

The tenant testified her sons could no longer use the common areas because of the dog. The boys no longer played in the yard. Their lives were in turmoil and disrupted.

The landlord responded to her concerns saying "move, if you don't like it". The tenant said she did not want to move, she liked the suite, she liked the location, and wanted to continue to live there. She also pointed out that rents in the area had significantly increased.

The tenant submitted a signed letter from her Attending Physician (AP) stating "she is a healthy ... female with no prior history of physical, emotional or mental health concerns". The AP further stated the patient was "expressing extreme distress and lack of sleep ...due to a dog who was constantly barking." The tenant was prescribed a trial of mediation because of the symptoms.

The barking continued and the landlord did nothing. Because her sons could not sleep, she switched rooms with them. Although the master bedroom was farthest away from the dog, the barking could still be heard. The tenant now was in the room closest to the barking dog. The tenant's anxiety, exhaustion, and stress worsened. Again, she approached the landlord and again he did nothing despite telling him that as a single parent of two boys, she could not afford to lose time from work because every penny counted.

Frustrated, the tenant contacted the city and lodged a complaint about the barking dog. The city responded in a letter advising that dog owners are responsible to limit barking between 8 p.m. and 8 a.m. and suggested she call Bylaws.

The tenant contacted the Municipal Bylaw Department to file a complaint but was told because she lived in the same house, albeit a basement suite, she could not make a formal complaint and bylaws could not investigate. They told her that a neighbor could make a complaint, but not the tenant. The tenant explained that the neighborhood has many unauthorized suites, so neighbors are reluctant to make formal complaints against each other for fear of retaliation. Bylaws suggested she contact Animal Control.

The tenant then contacted Animal Control. Animal Control investigated concluding the dog had food, water, and shelter thus was not at risk. There was nothing they could do. When she asked, "What about my well-being?" Animal Control responded their investigations are limited to animal cruelty issues etc.

The tenant stated that as her relationship with the landlord deteriorated and coincidental to her multiple complaints, her car was vandalized twice, and police reports filed. In June 2021, her tires were punctured and in August 2021, a rock was thrown through the front window of the car. The police told her that there was little they could do. She testified that as a result of these incidents and the incessant barking of the dog she has struggled personally, financially, mentally, and emotionally.

Although the tenant moved, she states she still suffers from severe anxiety, exhaustion, and stress. The initial medication did not help and so her AP changed the medication.

In support of her testimony, the tenant submitted two sound recordings of the dog barking (one in the middle of the night and one from early morning), an email she sent to the landlord describing the problem and asking the landlord to move the dog away from her windows, and the letter from her AP.

The tenant is requesting compensation for the loss of quiet enjoyment and moving expenses in the amount of \$2920.00

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 tenant applied under s. 62 of the *Act* for an order that the landlord comply with the *Act*, regulation and/or tenancy agreement about entitlement to quiet enjoyment as provided under s. 28 of the *Act*.

Section 62 grants authority to make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*. This 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.*

The tenant's application was dismissed because the tenant moved and no longer resides in the suite; therefore, the request for an order to give effect to the rights, obligations, and prohibitions under the *Act* has no effect.

Section 62 does not grant authority to compensate for damages or loss. The tenant did not make an application for a monetary order for compensation for damage or loss pursuant to s. 67 of the *Act*, although she continues to have the right to do so.

Section 67 authorizes the determination of the damage or loss and states:

Director's orders: compensation for damage or loss

67 *Without limiting the general authority in section 62(3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

Accordingly, the tenant has leave to apply for damages or compensation for the loss of quiet enjoyment pursuant to s. 67 of the *Act*.

For the reasons stated above, I dismiss the tenant's application for "*an order necessary to give effect to the rights, obligations, and prohibitions*" under s. 62 the *Act*, without leave to reapply.

Conclusion

I dismiss the tenant's application for "*an order necessary to give effect to the rights, obligations, and prohibitions*" under s. 62 the *Act*, without leave to reapply.

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: December 13, 2021

Residential Tenancy Branch