



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Five Mile Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on September 4, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- An order for the Landlord to comply with the *Act*, regulation, and/or tenancy agreement;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on January 17, 2022, and was attended by the Tenant, and two agents for the Landlord A.B. and D.L. (the Agents), all of whom provided affirmed testimony. As the Agents acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) package from the Tenant, which included a copy of the Application and the Notice of Hearing, and raised no concerns with regards to the date or method of service, I find that the Landlord was therefore sufficiently served for the purposes of the *Act* and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). As the parties acknowledged receipt of each other's documentary evidence and neither party raised concerns with regards to the date or method of service, I find that the parties were therefore sufficiently served with each other's documentary evidence for the purposes of the *Act* and the Rules of Procedure. I therefore accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in

limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation, and/or tenancy agreement?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy began on March 1, 2004. The parties agreed at the hearing that the building in which the rental unit is located is a largely concrete multi-unit building consisting of 9 floors (including the ground floor) and that the Tenant resides on the third floor (not including the ground floor).

The Tenant stated that they have been living in their rental unit for 18 years, and that for the majority of that time, there have been no significant interferences to their quiet enjoyment. The Tenant stated that despite having been at home for longer periods of time at various points during their long tenancy, they have never before experienced they type of noise issues that have been occurring over the last 21 months. The Tenant stated that they began working from home full time in mid-March of 2020, and that since that time they have experienced constant noise disturbances. Although the Tenant initially stated that they were not sure where exactly the noises were coming from, and

what was causing them, such as construction or another occupant in the building, through questioning it became clear that the noises were coming largely from above them, and that these noises were being characterized by the Tenant as sounds from other occupants dropping or dragging objects, or moving around loudly, versus the sounds of construction, such as saws and hammering.

The Tenant stated that although they understand and appreciate that some sounds carry, the level and frequency of the noise disturbances they are subject to are unreasonable. The Tenant stated that although the times that these disturbances occur are variable between approximately 5:00 AM and midnight, they occur to some degree almost every day. The Tenant provided a 15 page noise log which they stated was only a sample of the types, duration, and frequency of the noise disturbances suffered and pointed out that there were 23 separate disturbances on November 5, 2021, and 22 separate disturbances on November 14, 2021, which they characterized as two of the worst days. The Tenant acknowledged that they have spoken to current and previous neighbours, all of whom stated that they did not hear or experience the same noise disturbances and stated that although the Landlord has spoken to the occupants of several other units about noise, they are only the units beside, above, and below them, not the units that are kitty-corner.

The Agent A.B. stated that they have been unable to confirm the noise disturbances allegedly suffered by the Tenant or establish where they are coming from, despite all of their efforts. The Agent A.B. stated that they have visited the Tenant's rental unit many times and that although they could hear some noise, they had to keep quiet to hear it, and were not personally disturbed by this noise which they described as the normal noise of routine daily living activities in a multi-unit building. The Agent stated that they cannot remain in the Tenant's rental unit 24/7, have sent out a building wide notice about noise, and have sent out warning letters to several residents of rental units near, above, or below the Tenant's rental unit, copies of which were provided for my review. The Agents stated that they have asked other occupants of the building, such as the Tenant's closest neighbours and those living above and below the rental unit, if they have experienced the noises described by the Tenant or are creating them, and they have all denied either hearing or causing the noises described by the Tenant.

The Agents stated that they have also asked contractors and plumbers to listen for noise when at the building and they have reported no noise disturbances, and that despite a change of occupants in two rental units near the Tenant, there has been no change to the Tenant's position regarding noise disturbances, which leads them to conclude that the noises are simply the regular every-day noises of living that one would

expect in a multi-unit building. The Tenant denied that this is the case and stated that they believe the noises are new, not that they are just noticing them now that they are working from home full-time. Finally, the Agents stated that they have and continue to be willing to move the Tenant to another rental unit in the building, but the Tenant has declined. The Tenant agreed that they are unwilling to move at this time, as they are not satisfied that this will resolve the issue given that they are not certain exactly where the noise is coming from, and that other rental units they have been offered are more expensive.

The Tenant sought both an order for the Landlord to comply with section 28 of the *Act* and protect their right to quiet enjoyment, as well as monetary compensation in the amount of \$10,125.00 for noise disturbances suffered to-date, which they calculated as 45% of the rent paid over an 18 month period. The Tenant also sought recovery of the \$100.00 filing fee.

Both parties provided me with significant documentary evidence for consideration. The Tenant provided 26 sound recordings ranging in length from 1 minute and 24 seconds, to 18 minutes and one second, a 15 page noise log for the period of October 21, 2021 – December 14, 2021, 32 pages of digital evidence details, two letters to agents of the Landlord dated September 19, 2021, regarding the dispute, a monetary order worksheet with detailed compensation calculations, and copies of numerous email complaints sent to the Landlord between April 6, 2020 – December 15, 2020. The Landlord provided letters from four other occupants of the property whose rental units are either near, above, or below the Tenant's rental unit, copies of log book notes regarding the Tenant's noise complaints on four dates and the actions taken, a copy of a building-wide notice to residents regarding noise disturbances, copies of warning letters sent to four units near, above, or below the Tenant's rental unit on April 27, 2020, advising them of the Tenant's noise complaints and the requirements of the *Act* and their tenancy agreement with regards to noise, and copies of email correspondence with the Tenant between April 21, 2020 - December 17, 2020. Both parties submitted a copy of the tenancy agreement.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights 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 [*landlord's right to enter rental unit restricted*],

and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Further to this, Residential Tenancy Policy Guideline (Policy Guideline) #5 sets out the requirements for minimizing loss and Policy Guideline #16 sets out the criteria to be applied when assessing claims for damage or loss when there is no statutory remedy (such as the requirement under section 38(6) of the *Act*). Additionally, Policy Guideline #6, which relates to the entitlement to quiet enjoyment, states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected, and that a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises, including 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. It also states that although temporary discomfort or inconvenience does not constitute a basis for a breach to the entitlement to quiet enjoyment, frequent and ongoing interference or unreasonable disturbances may.

Although the Tenant provided a significant number of audio recordings for my review and consideration of varying lengths, and I agree that some noise can be heard in the majority of the recordings, in my opinion, neither the level or duration of the noises recorded constitute a significant interference or unreasonable disturbance that would give rise to a breach to the Tenant's right to quiet enjoyment of their rental unit under section 28(b) of the *Act*. Many of the recordings are very faint, and although the Tenant provided me with a detailed account of when in each recording noises can be heard, I was not always able to hear the noise allegedly occurring at that time stamp, even at maximum volume. In a number of the videos there was significant background noise occurring in the Tenant's own rental unit, such as the sound of a fan or refrigerator, which made it difficult to hear what the Tenant was attempting to record. Further to this, at least two recordings appear to have been taken outside of the rental unit at an undisclosed location, based on the notations in the digital evidence details that there were sounds of them entering or leaving the rental unit. As I am not sure how sounds heard at a location outside the rental unit would impact the Tenant's right to quiet

enjoyment of their rental unit, I am not sure of the relevance of these recordings, and have weighted them accordingly.

Although the Tenant acknowledged at the hearing that some of the recordings are faint, as they have only their cell phone and not professional recording equipment, and that there are background noises in some of the recordings caused by the Tenant themselves or things in their own rental unit, I find that I must weigh and consider the evidence put before me for consideration, not the evidence the parties wished they were able to put before me, such as higher quality recordings.

Although the Tenant often characterized the noises as very loud and unreasonable thumping during the hearing and in their digital evidence details, having listened to the recordings, I find that the noises are most accurately characterized as the normal noises of daily living activities one would expect in a multi-unit building in an urban area, such as the sounds of footsteps, movement, the opening and closing of doors, muffled voices, outside traffic, and the occasional louder noise such as a child crying, an object being dropped, or an item being moved or dragged across a floor. While I appreciate the Tenant's position that they are disturbed by these sounds, I am cognizant that everyone's tolerance for noise is different. Therefore I find that the test to be met here is not whether the Tenant subjectively feels that they are being unreasonably disturbed but rather whether the Tenant has satisfied me on a balance of probabilities that either the volume, duration, frequency, or nature of the noises being experienced are *objectively unreasonable* [emphasis added], thereby breaching their right to quiet enjoyment of their rental unit under section 28 of the *Act*, and entitling them to monetary compensation in the amount of \$10,225.00 for loss of quiet enjoyment.

None of the evidence before me from the Tenant, including their testimony, recordings, digital evidence details, noise log and written complaints, satisfies me that the nature, duration, or frequency of noise occurring in their rental unit is unreasonable for a multi-unit building in an urban area. Although the Tenant has provided me with complaints, noise-logs, and recordings, as stated above, I was unable to hear many of the noises allegedly recorded, and of those I could hear, most appeared to me to be very brief and low-level noises of daily living. Further to this, I find that many of the noises noted in the noise logs are very brief, only a few seconds in length or less, and interspersed with significant periods of silence. While I recognize that there are times when recordings and complaints are made on multiple days in a row, I also note that there are often weeks or months between the noise recording and complaints, which suggests to me that the noises are not as frequent as alleged by the Tenant at the hearing.

Although I am satisfied by the Tenant that they can frequently hear noise in their rental unit, for the reasons set out above I am not satisfied that the volume, nature, or duration of the vast majority of these noises is unreasonable. I find that the vast majority of the noises experienced by the Tenant are the brief and relatively quiet normal daily living activity noises that one would expect from a multi-unit building in an urban area. Finally, I find that it is more likely than not that either the frequency of the daily living activity noises in the building, or the Tenant's sensitivity to them, or both, has increased over the past 1-2 years, because both they, and other occupants of the building, have been home more frequently than would otherwise have been the case in the past.

As a result of the above, I am not satisfied by the Tenant that the noises occurring either constitute an objectively unreasonable disturbance which would breach their right to quiet enjoyment under section 28 of the *Act*, or that any disturbance suffered gives rise to the significant monetary claim for compensation in the amount of \$10,225.00. As a result, I dismiss the Tenant's Application regarding noise disturbances suffered prior to the date of the hearing, January 17, 2022, without leave to reapply.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, is affected by the fact that this decision was rendered more than 30 days after the close of the proceedings.

Conclusion

The Tenant's Application is dismissed without leave to reapply. However, if the Tenant has experienced or does experience noise disturbances after the date of the hearing, January 17, 2022, which go beyond the normal daily living activity noises one would expect from a multi-unit building, the parties should both be aware that this *may* [emphasis added] give rise to a new claim by the Tenant under section 28 of the *Act*.

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 27, 2022