Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Krellco Holdings Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by managers SK (the landlord) and ID. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing and the tenant’s evidence (the materials) in February 2022.

The tenant confirmed receipt of the landlord’s response evidence in February 2022.

The tenant affirmed he served a new package of evidence on March 21, 2022, one day before the hearing. The landlord stated she did not receive the new package of evidence on March 21, 2022.

Based on the testimony offered by both parties, I find the tenant served the materials in February 2022 and the landlord served the response evidence in February 2022 in accordance with section 89 of the Act.

Rule of procedure 3.14 states:

> Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17

Per Rule of Procedure 3.14 I am excluding the evidence the tenant claims that was served one day before the hearing.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to comply with the Act?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

I note the hearing lasted 82 minutes, I accepted 15 documents into evidence submitted by the tenant, some of them over 30 pages. The landlord submitted 89 pages of response evidence.

Both parties agreed the tenancy started in April 2018. Monthly rent is $1,138.00, due on the first day of the month. At the outset of the tenancy a security deposit of $547.50 and a pet deposit of $547.50 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence.

The tenant affirmed his right of quiet enjoyment has been violated because the landlord does not address his noise and smoke complaints. The tenant is seeking an order for the landlord to address noise and smoke complaints.

The tenant stated the upstairs tenants (the unit number is recorded on the cover page of this decision) are responsible for unreasonable noise and other tenants smoke in the rental building. The upstairs tenants occupy a rental unit directly above the tenant's rental unit.

The tenant testified he has been submitting complaints to the landlord about the upstairs tenants since 2018. The tenant said the upstairs tenants are responsible for stomping, hammering objects and dragging furniture throughout the day. The tenant affirmed the noise starts "around 2:30 A.M., predominantly around 4:30 A.M. and sometimes it continues on and off until 6:00 A.M."

The landlord stated the upstairs tenants are three adults and they have been living in their rental unit since 2004. The landlord started managing the wooden frame rental building in 2014 and has not received other noise complaints against the upstairs tenants. The landlord testified the upstairs tenants deny dragging furniture and they put carpet in their rental unit to avoid noise disturbances. The landlord submitted a letter from the upstairs tenants:

> My name is [redacted for privacy], and I live with my parents [redacted for privacy]. **We have lived in this apartment for over 18 years and my parents have helped to manage and maintain the building for the same length of time.**
> **I am writing this letter regarding the case against [the tenant], who has made unreasonable noise complaints against my family. During our 18 years of our residency, we have not received any noise complaints from previous tenants who lived in that suite.** The complaints started once [the tenant] arrived and has been constant since his arrival. [the tenant] has tried to intimidate my family and, on several occasions, has hit the roof of his apartment (our apartment floors) with force great enough to shake the building. **He has directed all blame for any sort of noise towards my family even if the noise is outside the building.**
> […]
> The three of us all work full time jobs and my father starts work at 6am. He is unable to have breakfast before work because he's worried about making any noise and my mother has resorted to cooking dinner at 3:00 pm and is hesitant on cooking breakfast due to his complaints. My mother also hesitates to clean the house with a mop or vacuum as [the tenant] thinks its too loud and will hit the roof of his apartment. She now

> delays the timing of her house chores and sometimes refuses to clean or cook due to her fear of disturbing [the tenant].
> […]
> **Overall, we feel harassed by [the tenant]'s actions and by the constant questions from management about the noise**. As per the tenancy act, we are unable to have peaceful enjoyment of our apartment and are unable to live a normal life due to his complaints.

I emphasized with bold letters the most relevant parts of the quotations in this decision.

The tenant affirmed, referencing the upstairs tenants' letter, that he banged on the roof of his unit once. Later the tenant said the upstairs tenants have been silent for the majority of the day. The tenant testified that he cannot hear the upstairs tenants cooking, but they are responsible for continuous unreasonable noise, and there is no carpet in the upstairs tenants' unit

The tenant stated the next-door tenant (the unit number is recorded on the cover page of this decision) was responsible for loud noise and the landlord did not address his complaints.

The landlord sent a letter to the next-door tenant dated January 28, 2021:

> Thank you for taking the time to steak with [landlord] last week and for bringing the issues and incidents with your neighbour to our attention once again. It is very important that we are informed when such things occur.
> **We understand that this situation is a very delicate one, as your neighbour is frustrated by certain noises and disturbances that are of his opinion, caused by you.** Yet his reactions and responses to you are affecting your quiet and peaceful right to your suite. **Please keep in mind that all the complaints related to noise, cooking, treadmill, etc. during regular hours, have been deemed reasonable and are within your rights to continue, as per the Residential Tenancy Act.**
> Please know that we do not want to see you leave over this**. We are doing our best to improve the situation, and have spoken to the Residential Tenancy Board and to Landlord BC and hope that these next steps we are taking will help to get us to a peaceful resolution.**

The landlord submitted into evidence the notice to end tenancy provided by the next-door tenant on February 28, 2021:

> I am sending you this letter to announce that on March 31 I will be leaving the apartment [redacted for privacy], to finish my tenant's agreement.
> **The reason why we have decided to move is the already known situation with the neighbour of [the tenant], with which we have felt so uncomfortable and so little supported by the office since it seems that they are afraid of this man**, but me and my husband we do not want to be involved in this problem that you have with him and that you cannot solve, this man has been very bad with us and for no reason, we cannot even live comfortably next to him because our presence makes him uncomfortable a very radical act on his part towards our person. I hope that in some future they can solve it because it will be very difficult for anyone to live in this apartment [redacted for privacy]. I just wanted to give you my reasons why we will move I hope you understand the inconvenience and insecurity we feel.

Both parties agreed the rental building is smoke free, except for one grandfathered tenant.

The tenant testified the smoke pollution in his unit originates from rental units other than the grandfathered tenant and from outside the rental building. The tenant said he believes the smoke pollution also originates from the downstairs tenant (the unit number is recorded on the cover page of this decision).

The landlord sent a letter to the downstairs tenant and inspected her unit. The downstairs tenant denied that she smokes. The landlord affirmed other tenants continuously deny smoking in the rental building and are frustrated with the landlord constantly inquiring them about smoke. The landlord stated there are no smoking signs in the rental building and the landlord conducts inspections frequently.

The tenant would like to know when the inspections happen.

The tenant submitted into evidence a letter from the landlord dated May 12, 2021:

> We would like to clear up any confusion from our last letter sent to you in March. As previously discussed, the tenants in [the upstairs tenant] are aware of the circumstances and are doing their best to be respectful of all tenants in the building. **It was concluded earlier that they are doing everything they can to minimize any noise and continue to do so. They too, are entitled to their right to quiet and peaceful enjoyment of their suite. We have determined that we are unable to do anything further to mitigate the situation as it has been deemed to be reasonable.**

> **With regards to the smoking concerns you have once again raised, we had thought they had improved as per noted in your prior letter. We will follow up once again with the tenant in question.**
> They have assured us that they do not smoke in the building or near the entrance ways of the building. All tenants are adhering to the bylaws outlined by the municipality. Beyond that, we have no recourse unless we catch them breaching these by-laws.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 28 of the Act states:

> 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.

Residential Tenancy Branch Policy Guideline 6 states:

> **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 landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I note the upstairs tenants claim “we feel harassed by [the tenant]’s actions and by the constant questions from management about the noise” and the next-door tenant claims “The reason why we have decided to move is the already known situation with the neighbour of [the tenant], with which we have felt so uncomfortable and so little supported by the office since it seems that they are afraid of this man”.

Based on the landlord’s convincing and detailed testimony, the upstairs tenants’ letter, the letter from the landlord to the next-door tenant dated January 28, 2021, the next-door tenant’s letter dated February 28, 2021 and the letter from the landlord to the tenant dated May 12, 2021, I find the landlord has been rigorously investigating the complaints submitted by the tenant against other tenants in the rental building and taking steps to address the tenant’s complaints. The landlord has inquired other tenants several times about the noise and smoke issues, sent letters, contacted the Residential Tenancy Branch and Landlord BC about the complaints filed by the tenant.

The entitlement to quiet enjoyment does not guarantee a tenant an absolute right to silence in his rental unit. Some noise is unavoidable in a multi-unit dwelling, especially in a wooden frame building.

The tenant accepts that part of the smoke pollution originates from the street. I accept the landlord’s undisputed testimony that the landlord inspected the downstairs unit in response to the tenant’s smoke complaints and conducts inspections in the rental building frequently.

The Act does not require the landlord to inform the tenant when the landlord conducts inspections in other rental units, or to send copies of warning letters submitted to other tenants in response to the tenant’s complaints.

In this matter, I find that the tenant has not provided satisfactory evidence to establish, on a balance of probabilities, that the landlord is not complying with the Act.

Accordingly, I dismiss the tenant’s application for an order for the landlord to comply with the Act.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's application 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: March 25, 2022

Residential Tenancy Branch