



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 a tenancy. The Tenants applied on October 1, 2021 for:

- an order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlord by registered mail on an unknown date in October, 2021, which the Landlord confirmed he received in mid October, 2021. The Tenant testified he served his evidence on the Landlord by registered mail on an unknown date in December, 2021, which the Landlord confirmed he received in January 2022 with sufficient time to review it before the hearing. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified he served his responsive evidence on the Tenants in person on February 1, 2022, which the Tenant confirmed. I find the Landlord served the Tenants in accordance with section 88 of the Act.

Issues to be Decided

- 1) Are the Tenants entitled to an order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement?
- 2) Are the Tenants entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. The tenancy began under a different landlord in 2004, and the current Landlord took over in late 2007; the Tenants pay rent of \$640.00, which is due on the first of the month; and the Tenants paid a security deposit of \$450.00, which the Landlord still holds.

The Tenant testified that he is seeking an order for the Landlord to comply with the following sections of the tenancy agreement, a copy of which was submitted as evidence:

- the Conduct section of the tenancy agreement, which reads as follows:

17. **CONDUCT.** In order to promote the safety, welfare, enjoyment and comfort of other occupants and Tenants of the residential property and the Landlord, the Tenant or the Tenant's guest must not disturb, harass, or annoy another occupant of the residential property, the Landlord or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the Landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the Tenant or the Tenant's guest, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the Landlord. The Tenant or the Tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time and in particular between the hours of 11:00 p.m. and 9:00 a.m.

If the Tenant or Tenant's guest causes another Tenant to vacate their rental unit because of such noise or other disturbance, harassment, or annoyance, or because of illegal activity by the Tenant or Tenant's guest, the Tenant must indemnify and save harmless the Landlord for all costs, losses, damages, or expenses caused thereby. The Landlord may end the tenancy pursuant to the Act as one of his remedies.

25. **WASTE MANAGEMENT.** Garbage, waste, boxes or papers must not be placed or left in a hallway, parking area, driveway, patio, or other common area of the residential property, except those areas designated for disposal. All garbage must be drained, bagged, or wrapped, and tied securely before being placed in a chute or approved receptacle. Spillage must be cleaned up immediately by the person responsible. Any large item to be discarded, such as furniture, must not be abandoned or placed in garbage collection areas, but must be removed from the residential property by the Tenant at the Tenant's expense. The Tenant must comply with the residential property recycling methods.

27. **OUTSIDE.** A rug, mop, rag or duster must not be shaken out of a window, door, or in a common area of the residential property. Nothing may be thrown from or placed on, hung on, or affixed to the inside or outside of a window, door, balcony, or an exterior part of the residential property. An awning, antenna, satellite dish, cable or wire must not be affixed on the residential property. A barbecue must not be used on or in the rental unit or stored on a balcony without the prior written consent of the Landlord.

The Tenant testified he wants the upstairs tenants to move out, because they make so much noise it interferes with his right to quiet enjoyment.

The Tenant testified that the noise heard from the upstairs tenants is stomping, hammering, loud conversation, yelling, the sound of a ball bouncing, and a loud alarm, which the Tenant said can be heard throughout his unit. The Tenant testified the noise can be heard day and night.

The Tenant testified that the noise from the upstairs tenants makes it difficult or impossible to focus during the day and to sleep at night.

The Tenant submitted that the Conduct section of the tenancy agreement specifies that residents are to be especially quiet during the night. The section includes: "The Tenant or the Tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time *and in particular between the hours of 11:00 p.m. and 9:00 a.m.*" (Emphasis added.)

The Tenant testified the excessive noise from the upstairs tenants has been an issue since 2018. The Tenant testified he went upstairs twice in November 2018, to speak to the tenants, but the noise level did not change.

The Tenant testified that in 2019 he would knock on his ceiling with a broom when the upstairs tenants were being loud, but testified that they know they are loud and told the Tenant they don't care.

The Tenant testified that in May 2020 he told the resident manager about the noise problem, but that in the following few days the noise level increased. The Tenant testified that in November 2020 he again told the resident manager about the excessive noise, but the upstairs tenants did not quiet down.

The Landlord testified that the Tenant complained about noise from the upstairs tenants in late November 2020, and that the resident manager spoke with the upstairs tenants. The Landlord submitted that the upstairs tenants are honest and quiet, denied making noise, and said they would be mindful about noise.

The Tenant testified that in February 2021 he wrote a letter to the resident manager regarding the problems with the upstairs tenants, and provided the resident manager with photo and video documentation.

The Tenant submitted a draft of his letter to the resident manager as evidence. The draft states that:

- they have been very loud for three years;
- the Tenant cannot enjoy his hobbies or sleep at night;
- many times a month, they use a hammer, striking so hard the Tenant can hear it in every room;

- they have loud fights;
- they drop items and dirty water onto the Tenant's balcony; and
- they are breaking the Conduct rules of the tenancy agreement.

The Tenant testified that after he provided his letter to the resident manager, the two met later the same month to discuss the matter. The Tenant testified that during their meeting, the resident manager removed cloth from the Tenants' balcony that had fallen from the upstairs tenants' balcony, and said that other neighbours have also complained about the noise from the Tenants' upstairs neighbours. However, the Tenant testified that during the same conversation, the resident manager contradicted himself, stating that the upstairs tenants were not that loud, and that they go to bed immediately at 10:00 p.m.

The Tenant testified that it was the person who lives above the upstairs tenants who had complained about their noise.

The Landlord testified they have received complaints about the upstairs tenants only from the Tenant, and from no other parties.

The Landlord testified that following the Tenant's February 2021 written complaint about the upstairs tenants, the resident manager spoke with the upstairs tenants again. The Landlord submitted that the upstairs tenants admitted to the resident manager that they were fighting and that "they might have been loud, but not excessively loud," and stated that their kids go to bed at 10:00 p.m. The Landlord testified that the resident manager told the upstairs tenants not to hang things off their balcony, and that they said they would not.

The resident manager did not attend the hearing to provide testimony and did not provide a written submission.

The Tenant testified that on March 23, 2021 the Landlord sent a letter to the upstairs tenants regarding the Tenant's concerns. A copy of the letter is submitted as evidence, and states that a neighbour has complained that the tenants have been: causing loud noise for "awhile now"; hammering and loudly arguing; and leaving garbage on their balcony. The letter asks the tenants to be careful about dropping water from their balcony, to properly dispose of their garbage, to be considerate of their neighbours, and to keep the noise as low as possible.

The Tenant testified that the noise from the upstairs tenants continued after the Landlord gave them the letter.

The Tenant submitted as evidence ten dated video and audio clips from June, July, and August 2021. The Tenant testified that the videos submitted as evidence are from 10:30 p.m. to 1:30 a.m., but that the upstairs tenants are even noisy at times from 2:00 a.m. to 5:00 a.m. The Tenant submitted that his evidence demonstrates that all members of the family living upstairs are making noise late at night.

The Tenant's video and audio evidence documents:

- repeated loud thumping and banging on June 6, 2021 at 2:00 p.m.;
- loud stomping on July 6, 2021 at 11:30 p.m.;
- loud stomping on July 7, 2021 at 11:30 p.m.;
- an adult male speaking loudly, and at least two young children talking, yelling, and shrieking on July 20, 2021 at 11:30 p.m.;
- adults and children loudly talking and laughing on July 26, 2021 at 12:00 a.m.; and
- adults talking and laughing on August 16, 2021 at 1:30 a.m.

The Landlord testified that as the building has concrete floors, noise travels, so noise heard by the Tenant could come from different areas of the building.

The Tenant submitted that the voices he hears and recorded as evidence are the voices of the upstairs tenants; they sometimes are on their balcony, and the Tenant knows the sound of their voices.

The Tenant testified that the upstairs tenants leave garbage and clothing on their balcony railing, and submitted as evidence photos dated August and September 2021, depicting the same. The Tenant testified that he then cannot open his window or balcony door, as it is unsanitary with things dropping from above. The Tenant testified that garbage falls onto his balcony from the upstairs tenants' balcony about once a month.

The Tenant submitted that the Landlord, in his March 23, 2021 letter, had instructed the upstairs tenants to stop leaving garbage on their balcony, but that they continue to do so.

The Tenant testified that the upstairs tenants also sweep dirt off their balcony, and shake rugs from their balcony, such that when the Tenants have their window open, the dirt and dust comes in.

The Tenant submitted that the Outside section of the tenancy agreement expressly forbids shaking rugs out of a window or door, and that the tenancy agreement forbids items being hung on a balcony.

The Landlord testified that other than two noise complaints from the Tenant, which they followed up on, they had not heard further from the Tenant, so “thought things were okay.”

Analysis

Section 28 of the Act [*Protection of tenant’s right to quiet enjoyment*] states that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance.

Residential Tenancy [Policy Guideline 6 Entitlement to Quiet Enjoyment](#) 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. ... 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.”

Section 62(3) of the Act [*Director’s authority respecting dispute resolution proceedings*] allows an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations, or a tenancy agreement.

The Tenant has provided affirmed testimony that the excessive noise from the upstairs tenants has been an issue since 2018, he approached the upstairs tenants twice in 2018 regarding the issue, he spoke with the resident manager about the issue in May and November 2020, and wrote a letter to the resident manager in February 2021, providing photos and video documentation to support his claims.

The Tenant has provided dated, timestamped audio and dated photos demonstrating that the issues around excessive noise and things dropping from the upstairs tenants’ balcony have not been resolved.

Based on the Tenant's affirmed testimony and detailed and thorough evidence, I find it is more likely than not that the upstairs tenants are unreasonably disturbing the Tenant on a frequent and ongoing basis by not observing the requirements of the Conduct, Waste Management, and Outside sections of the tenancy agreement, which include:

- tenants and their guests must not disturb, harass, or annoy another occupant, and that noise must be limited, particularly between 11:00 p.m. and 9:00 a.m.;
- garbage and other waste must only be placed in areas designated for disposal; and
- tenants must not shake rugs out of a window or door, and may not hang things on their balcony.

Therefore, I find that the Tenants have proven that their right to quiet enjoyment is being breached, per section 28 of the Act.

Pursuant to section 62(3) of the Act, I order the Landlord to take all reasonable measures to enforce the tenancy agreement, specifically with regards to sections 32(1) and 28 of the Act.

If the breach of the Tenants' quiet enjoyment persists, they are at liberty to apply for future relief under the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants are successful in their application, I order the Landlord to pay the \$100.00 filing fee the Tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Tenant's application is granted.

I order the Landlord to take all reasonable measures to comply with the Act.

The Tenant may withhold \$100.00 from a future rent payment on **ONE** occasion in full satisfaction for a return of the filing fee.

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 07, 2022

Residential Tenancy Branch