



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC FFT

Introduction

The applicant tenants seek relief pursuant to sections 62(3) and 72 of the *Residential Tenancy Act* ("Act").

Attending the hearing were the two tenants (only tenant K.C. testified) and a representative for the landlord. The parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained. It is noted that the correct, legal name of the landlord is included in the style of cause of this decision.

Issues

1. Are the tenants entitled to an order under section 62(3) of the Act?
2. Are the tenants entitled to recover the filing fee under section 72 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on October 29, 2021. Monthly rent is \$1,916.00. The rental unit is a studio apartment located on the 18th floor of a concrete high-rise in downtown Vancouver. A copy of the written tenancy agreement was in evidence.

Constant, late-night, quiet enjoyment-infringing noise is the central issue in this dispute, and the reason why the tenants have brought this application. According to the tenants, their next-door neighbour has had a few late-night parties, has made lots of banging noises, doors being slammed shut, cabinet drawers loudly closing, loud talking and late-night comings and goings. What is more, their neighbour has, on a few occasions, created disturbing noises caused by a drilling machine and hammering.

As a result of the noise, the tenants have suffered disturbed sleeps, often resulting in 3–4-hour sleeps. This has affected the tenants' health and mental well-being. More recently, and on a few occasions, the tenants have smelled marijuana smoke (the smoke drifts through the bathroom vents; the tenants and their neighbour share the same wall and vent of their respective bathrooms). Sound recordings of various noises were submitted into evidence.

To deal with the problem, the tenants have contacted the landlord on numerous occasions. They have contacted the third-party concierges in the building. Neither the landlord nor the concierges have resolved the ongoing noise issue, submits the tenants. Indeed, the tenant testified that when they have contacted the concierge – there are about 4 with whom they regularly interact – the concierge “does not bother to check” the noise from their neighbour. Lately, the tenants remarked, they “don’t even bother calling anymore” because they do not expect any sort of resolution. Moreover, the tenants do not feel safe anymore because the noise-making neighbour has now taken to “bullying” the tenants by making excessive noise.

The landlord's representative (hereafter the “landlord” for brevity) testified that the multi-rental unit residential building is in downtown Vancouver and there are 236 rental units in the building. The floorplan is such that the tenants' studio abuts the rental unit in which the tenants' neighbour resides.

In respect of the tenants' complaints, the landlord at first directed the concierge to investigate the matter, and to attempt to have the neighbour keep the noise down. The landlord herself contacted the neighbour and told him to reduce his noise, to try to be quiet, and to remind him of quiet time in the building. The neighbours are a young couple who have resided in the building since 2014. Moreover, the landlord noted that there have been no other complaints about the neighbour. (The tenants referred to one complaint made against the neighbour, by a different occupant in the building.)

After a few more complaints, the landlord gave the neighbours a breach letter on or about November 6, 2021. The breach letter reiterated that the neighbours cannot continue to make noise which results in complaints from the tenants. Several days later, on November 14, a concierge attended to the neighbours, and they apologized for making noise. (The neighbours had recently gotten engaged.) Another breach letter was issued on November 16. While the neighbour admitted to playing the guitar and singing, he denied making excessive noise.

A few more complaints came in, and the landlord asked the concierges to make additional, focussed checks on floors 17, 18, and 19, with a particular emphasis on frequent checks on floor 18. However, none of the concierge checks revealed any noticeable noise from the neighbours' rental unit.

Nearer to the end of November, the landlord received a complaint regarding drilling and vacuuming noises. She noted the shared wall between the tenants and their neighbour does not insulate sound transference particularly well. The neighbours explained that they try to be quiet, but that they are also "just trying to live a normal life." The landlord took additional steps to resolve the noise by purchasing for the neighbours little plastic pads which usually reduce the sound made by closing cupboards and doors.

The landlord conveyed her efforts to the tenants, who asked that the landlord evict the neighbours. However, the landlord's position is that they have no grounds to evict the neighbours. From this, the landlord then offered the tenants the option of either breaking the fixed-term lease without penalty (thus allowing them to move elsewhere) or of moving into a different rental unit in the building. The alternate rental units were, it should be noted, higher in rent (\$2,166 versus \$1,916). The tenants indicated a desire to terminate the lease and move out, but later rescinded this and continued to reside in the rental unit.

During her testimony, the landlord and the tenant conducted a test. The landlord went into an adjacent rental unit and closed doors, opened and closed cabinets, and then confirmed with the tenant that he could hear those noises. The landlord's intention was to demonstrate to the tenant that the noises he heard are regular noises created in the building.

As time passed and complaints continued, the landlord instructed the concierges to continue to check on the floor and the neighbours. Again, nothing was heard.

The landlord testified, "I was trying my best to resolve the situation." But she also explained to the tenants that "this is how it is . . . this is a building in the downtown," and that the noises were normal. She cannot ask the neighbours to not live a normal life.

In rebuttal, the tenant testified that they did not accept the alternate rental unit because the rent was higher. It is not logical or fair that they should pay higher rent when it is the neighbour who makes the noise. And while the tenant does not dispute that his neighbour cannot make any noise during the day and cannot live an ordinary life, it is nevertheless the case that he ought not make excessive noise late at night.

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 their case is on the person making the claim.

Here, the tenants seek an order under section 62(3) of the Act, which states that

The director [the arbitrator] 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 tenants argue that their right to quiet enjoyment, including the right to freedom from unreasonable disturbance ([section 28 of the Act](#)) is being breached, and they would like the landlord to put a halt to the ongoing breach.

I have carefully reviewed the documentary and audio evidence before me. I have also considered the oral evidence—that is, the testimony—of the parties. While it is my finding that the neighbours held a few late-night parties that undoubtedly caused an unreasonable disturbance for the tenants, it is my finding that the other noises – except for the drilling and hammering – are those which are to be normal and ordinary in a multi-residential unit property of the type in which the tenants reside.

It is not lost on me that the tenants are bothered by the noises and sounds of their neighbour. However, their neighbour has the right to carry on with his life in the same manner as the tenants. Further, while it is unfortunate that the wall between the tenants and their neighbour is not particularly effective at dampening sound transference, there is no evidence before me that the construction of the property breaches any health, safety, or building codes. It is also an unfortunate fact of life in a high-density apartment building in the downtown core of a large city that noises and sounds will be ever present. The noises caused by the tenants' neighbour are, it is my finding (and I have listened to the recordings), acceptable and to be expected in such a building.

As for the landlord's efforts, it is my finding that they have made reasonable efforts to address the issue, including even issuing warning letters to the neighbours. And, while the concierges' responses to the tenant may have been rather lackluster, the evidence before me leads me to find that they were responsive to the landlord's demands to investigate the issue.

Taking into careful consideration all the evidence before me, it is my finding that the tenants have not proven that the landlord breached section 28 of the Act. Thus, no order under section 62(3) of the Act will be issued against the landlord.

As the tenants' application for an order was not successful, their claim to recover the cost of the application filing fee under section 72 of the Act is similarly dismissed.

Conclusion

The application is dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: May 20, 2022

Residential Tenancy Branch