



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INT'L PROPERTIES CANADA
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

Both tenants and an agent for the landlord company attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord should be ordered to comply with the *Residential Tenancy Act* and the tenancy agreement by providing the tenants with quiet enjoyment of the rental unit?

Background and Evidence

The first tenant (BG) testified that this fixed term tenancy began on February 1, 2021 and reverted to a month-to-month tenancy after January 31, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 is payable on the 1st day of each month and there are no rental arrears. On January 11, 2021 the landlord collected a security deposit from the tenants in the amount of \$800.00, as well as a pet damage deposit in the amount of \$800.00 on February 1, 2021, both of which are still held in trust by the landlord. The rental unit is a 3rd floor apartment in a complex containing 4

floors, and a copy of the tenancy agreement has been provided by both parties for this hearing.

The tenant further testified that the tenants seek to be able to get a good night sleep and quiet time, which they are not receiving. The tenants in the apartment directly above don't seem to care, mostly the male. He is loud, stomps in the middle of the night, and even while the tenants have white noise machines going, it is consistent every night. The tenants have sent emails to the landlord's management and have recorded noises which the tenants gave to the landlord on a flash drive. One time, there was an incident when the man came down aggressively knocking on the tenant's door, not liking notes posted to his door by the landlord's management. He said that the tenants have big issues and wanted to talk about it threatening that there would be bigger issues, but the tenants didn't answer the door. Then he used foul language and saw through the peep-hole in the door that the tenants were there. The tenants were absolutely shaken, and he eventually left.

The tenant wrote an email to the landlord about it, who said that circumstances had changed and the landlord's agent said that he would talk to the resident in the upper unit. The tenant called the non-emergency line of the landlord the next day, but was told that it had to have been done at the time, so no report was made. Audio has been provided for this hearing. The resident from the upper level takes walks past the tenants' door, listening so the tenants are quiet. It's now intimidating, and the tenants don't feel safe doing laundry. He's been so loud the tenants can track him throughout the building and even know his parking space number. It's unknown if he knows who the tenants are. When the wife in the upper level is home the tenants can hear, but it's not loud noise. The male resident has tantrums each time the landlord puts a notice on his door, which has happened about 3 times.

The tenant heard that the residents in the upper level have been given a notice to end the tenancy, but the tenant is not sure if that actually happened, but the tenants kept complaining. Then the tenants got a note on their door stating that the residents in the upper level are not creating excessive noise, and that unless the tenants provide more concrete evidence, and continue with further complaints, that would result in receiving a notice to end their tenancy. The tenants have not been served with such a notice, but were too frightened to complain anymore.

The second tenant (DG) testified that a noise investigation was done, which the tenants had scheduled assuming all parties would be present, but the male resident in the upper floor was not home. The evidence of the landlord states that he was home, and that all tenants had been interviewed, but had not been; only the female resident

was present. The meeting was held in the rental unit, and staff of the landlord went upstairs and walked around, while the agent of the landlord who attended this hearing remained in the tenants' rental unit. The tenants took the day off work to be present for the meeting. The tenant refers to a letter of the landlord dated March 10, 2022 to the tenants which states that the landlord investigated the noise complaints but have found that the residents on the 4th floor are not creating excessive noise.

The tenants feel threatened when they go out and check the halls first.

The landlord's agent testified that there are 3 buildings with 3 stories each, and this one has 123 suites on 4 floors. Both units are at end of a long hall that has stairs on 1 side. The first complaint was in September, so for the first 7 months there were no issues. With any complaint the landlord notifies people to give them a chance to respond.

The landlord's agent investigated with 2 other male maintenance employees of the landlord. The maintenance employees slammed cupboard doors to see what kind of sounds the landlord's agent could hear, and found that the sounds are normal for the apartment, and told the tenants that. The resident in the upper level is about 180 pounds, and the maintenance employees also live in the building. There was no mention at the time that the male resident in the upper level wasn't there, and the landlord's agent is not sure how that would change things. The landlord's agents also talked to neighbours around the area. The landlord has provided a letter from another resident who resides next door to the upper level resident dated May 19, 2022 which states that there is no unusual noise or behaviour, and no one else has complained.

The residents in the upper level have lived there since 2016. The landlord has also provided a copy of the move-out condition inspection report of previous tenants in this rental unit to see if there are any comments, but none exist. That tenant moved out in February, 2020 after a 4 year tenancy with no issues or history. That tenant did not move out due to noise but moved to Vancouver.

The tenants say they spent a night in a hotel, hired a lawyer, are going for counselling, and are on medication for stress, but there is no evidence of any of that. No receipts have been provided. The recording that the tenants provided to the landlord's agent indicating that the upper level resident yelled at them was not clear enough for the landlord's agent to make heads or tails of what was being said; nothing could be made out. It is not a natural thing to start recording someone at the door. The landlord's agent couldn't hear threats. The tenant testified that they are fearful when the resident from the upper level walks by, but the landlord's agent questions how they would know that.

The tenants also called police, who went to the upper level suite right after they had a baby. That resident sent an email to the landlord's agent about the police visit stating that the policeman was apologetic, and said that if the tenants called police again they could be charged with mischief.

The tenants have requested a reduction in rent, but the landlord's agent testified that he doesn't understand how that would help. A motive of wanting rent reduced doesn't make sense and the landlord calls into question what stress is caused. The landlord would want to get the hell out of there.

Based on all of the landlord's investigation, talking to people, no noise experienced by the next door neighbour to the upper level residents, and no history, the landlord would not win in Arbitration if the upper level residents were given a notice to end their tenancy for cause.

SUBMISSIONS OF THE TENANTS:

The tenant is a heavy lady and doesn't sound as loud as the residents in the upper level. The tenants have asked their neighbour below who said that noise is very minimal. The tenants are experiencing a higher level of noise especially at night than what is considered normal. The tenants told the landlord that they sought legal advice, but didn't hire a lawyer. The tenants are taking medication, but did not want to upload their medical information, and are getting counselling. The police were called when the tenants couldn't call the landlord anymore. The tenants take medication to sleep through the night.

SUBMISSIONS OF THE LANDLORD:

No one else has mentioned the resident from the upper level walking around on other floors other than his own apartment. They have a new baby and carpet on the floor, but there are no complaints about the baby crying. It is a 1974 building, and the bedrooms are directly above and below each other.

The building has sold, and the possession date is the date of this hearing.

Analysis

I have reviewed all of the evidentiary material, including the audio recordings, and I agree with the landlord's agent that there is nothing unusual about any noises. I could hear knocking on a door and a person state: "I'm done," and, "there will be issues," but nothing else was audible, and I heard no threats. It seems evident to me that the resident in the upper level is annoyed with the notes left on the door by the landlord respecting complaints of the tenants. However, in order to be successful with the

application the tenants must establish that the landlord has not been complying with the *Residential Tenancy Act* or the tenancy agreement.

A landlord is required to provide quiet enjoyment of a rental unit to a tenant. In the event that a tenant's quiet enjoyment is interrupted, a tenant may apply for an order that the landlord comply with the law. In this case, the landlord has investigated and has provided evidence that no other residents, particularly one right next door and a previous tenant in this rental unit have had any issues of unacceptable noise. The landlord's agent testified that giving a notice to end the tenancy of the upper level residents would not hold up at Arbitration.

The landlord's agent also testified that the tenants have requested a reduction in rent, and questions how that would help. I note that the tenants' email to the landlord dated April 1, 2022 states that the tenants have been advised to apply for a rent reduction, but this application does not seek such an order.

I find that the landlord has complied with the *Act*, and I am not satisfied that the tenants have established that the landlord has failed to comply with the *Residential Tenancy Act* or the tenancy agreement. I dismiss the tenants' application in its entirety.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

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: July 05, 2022

Residential Tenancy Branch