



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for the Landlord to Comply with the Act or tenancy agreement; for an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and two agents for the Landlord, T.G. and D.A. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Landlord be Ordered to Comply with the Act or tenancy agreement, and if so, in what way?
- Should the Landlord be Ordered to make repairs to the unit or property, and if so, what repairs?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2015, and ran to February 29, 2016, then operated on a month-to-month or periodic basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a (current) monthly rent of \$1,084.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$470.00, and no pet damage deposit.

The Tenant said that his claims are both related to an issue he has with the tenant in the unit above his ("Upper Tenant"). He says the Upper Tenant is noisy at all hours, and the Tenant said this problem could be solved if the Landlord put carpeting back in that upper unit. The Landlord said that there was carpeting in the upper unit, but that it was replaced with laminate in 2019.

In the hearing, the Tenant said that he has lost the quiet enjoyment of his rental unit, which could have led him to pursue a monetary claim, but he said:

it is unbearable to live in my apartment. I'm not asking for money. What I want out of that is the carpet to be put back upstairs above my apartment. It was removed in 2019. I should be able to sleep in my apartment. without someone dropping things, running, laughing above me a 2:00 a.m. Putting carpet back in the suite would allow the return of quiet enjoyment of my apartment.

The Agent said:

What I can say, I'm in the same situation. I have my neighbours – I live next to [the Tenant]. The tenant above me has carpets. I've lived here since 2008. The unit above him had carpet until 2019. It was replaced with laminate. There's no difference before or after. You can hear some noises from neighbours, because it is an old wood building. This is normal. I'm not sure if carpets will change the situation.

[The Tenant] referred to the tenant [above] who lived there before when it was carpeted. That tenant pretty much didn't live in the suite, but lived with her boyfriend. She was only home four or five days a month. She moved in 2019. When she moved out. We decided to install laminate. We installed it in more that 60% of our building, and we've had no other complaints.

The Tenant said:

I've been living here seven years in September. The first four years, [the Agent] heard nothing from me. It was carpeted. The lady upstairs owned a cat. She wouldn't leave her cat for days on end.

When [the Agent] said that 60% have switched to laminate and I'm the only one complaining, other neighbours – if there's laminate or not - it is better to have carpet. This [Upper Tenant] doesn't live above [the Agent]; she has different tenant above her. Not someone who comes in late . . . Since 2019, there's been – this is the third tenant living above me. The first two, I did make a phone call or two. I heard nothing upstairs first - now all the time. I hear everything - heavy-footed walking. They complied when [the Agent] asked them. The current tenant is the complete opposite – that's why I've initiated this dispute.

[The Agent] offered for me to switch apartments, and my initial thought is no, because the same thing will happen to her. I'm one of 4 units out of 50 that have their own private patio with a high fence and a garden; why would I want to give that up? I don't think I should move because of the tenant who isn't complying with the tenancy agreement. She's not allowing me to live normally, it's not fair.

The Agent said:

I used to be the building manager from 2004 – 2008 for the same apartment [the other Agent] is living in now. I understand [the Tenant's] frustration, because I am very sensitive to noise. I started to use ear plugs. It's not just noise from above

that I could hear – the big problem is that it's a wood building - so everything is transmitted through the structure. Not having carpets is not the problem. This building has a layer of concrete through the levels. The apartment above was carpeted, but we installed laminate because it's more sanitary. [The Agent] could hear before, and she could hear now. There is nothing we can do to a structure. Noise transmits through the structure.

The Agent said:

We proposed to [the Tenant] to switch units [with the upstairs tenant], because she says she doesn't have any noise from any people upstairs. She can have her privacy and not be terrorized by him. I don't see honestly another solution.

We can wait until there's an available suite on top. But nobody moves. The only case was when three tenants in two years moved - the people above [the Tenant] who were terrorized with him knocking all the time, so they moved out. They said:

We love the building, we love the apartment, but the Tenant downstairs keeps knocking. Maybe you could help us with a different solution. I would like [the Tenant] to stop knocking and scaring the tenant above. I am afraid to come home.

My own experience, I am very sensitive to noise, and I know you can hear everything in this building. How can we resolve it, because carpets are hard to clean and nobody wants them in this Covid. The people above the manager changed carpet to laminate.

The Tenant said: "I acknowledged that I phoned [the Agent] about the other two tenants. They weren't dropping their weights as much."

The Tenant submitted audio recordings of the noise he said he hears regularly. I listened to all of the Tenant's audio recordings and I heard the following:

- Fan or other mechanical noise;
- Bumping noises like footsteps (not very loud in recordings);
- Faint noises of people talking – couldn't make out what they said;
- Louder footstep noises very briefly – twice in six recordings;
- Vibration – maybe a bed rocking briefly;

- Crashing/Loud bang sound once;
- Dragging of something a few times; and
- At 12:30 a.m. – quiet walking noise from above.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

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. .

[emphasis added]

The steps the Agents have taken so far include having talked to the Upper Tenant and

asked her to be quieter. The Tenant said this worked for a few months, but then it was back to the noisy way it was. Also, the Landlord and the Upper Tenant have agreed that the Tenant can trade apartments with the Upper Tenant, so that the Tenant's unit is quieter. However, the Tenant said that he does not want to trade his fenced garden with a balcony in the upper unit, even if it will increase his quiet enjoyment of his residence.

Having reviewed all of the audio clips, I find that the Tenant's claims are excessive and unreasonable. I find that the noise in the audio clips is consistent with the noise typical in a building of the age and character of this wood-framed residential property.

The Tenant acknowledged that he has complained about other tenants who lived above him. I find that hearing footsteps, faint conversations, and the occasional "thud" between an upper and lower rental unit does not constitute unreasonable disturbance.

I find that the Agents have been reasonable in trying to find a solution for the Tenant, but that the Tenant is unwilling to consider anything other than requiring the Landlord to change its flooring policy and install carpeting again in the Upper Tenant's suite. Landlords are allowed to replace carpeting with laminate, especially in a pandemic, when it is more difficult to sanitize a carpet.

In balancing the Tenant's right to quiet enjoyment of his rental unit with the Landlord's right to maintain the residential property reasonably, I find that the Tenant is being unreasonable in this set of circumstances. Given these findings, I dismiss the Tenant's Application wholly without leave to reapply, pursuant to section 62 of the Act.

However, I also **urge the Agents to continue** to work with the Tenant and the Upper Tenant to find ways to reduce the noise that is made in the upper unit. The upper tenant could be discouraged from dropping things on the floor and from wearing shoes in the rental unit, since it is a wood-framed building in which noise transfers easily from unit to unit. This reminder may have to be issued on a bi-monthly basis.

Conclusion

The Tenant is unsuccessful in his Application, because he failed to provide sufficient evidence to meet his burden of proof on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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 22, 2022

Residential Tenancy Branch