



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on September 21, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Compensation for monetary loss or other money owed.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on February 9, 2023, and was attended by the Tenant, the Tenant's daughter, the Tenant's advocate N.A. (Advocate), and two agents for the Landlord T.A. and J.F. (Agents). All testimony provided was affirmed. As the Agents acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

A copy of the decision and any orders issued in their favor will be sent to the parties in the manner requested at the hearing.

Preliminary Matters

Although the parties engaged in settlement discussions pursuant to section 63 of the Act, a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision under the authority granted to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulations, or tenancy agreement?

Is the Tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Tenant and Advocate claim that the Tenant's neighbour has been disturbing the Tenant's right to quiet enjoyment for quite some time by using the bathroom, bathroom fan, and doing household chores, such as washing dishes, at night, which causes them significant disturbance. The Tenant and Advocate claim that despite advising the Landlord on numerous occasions of these disturbances, the Landlord has failed to take adequate steps to protect their right to quiet enjoyment. As a result, the Tenant sought an order for the Landlord to protect their right to quiet enjoyment, an ongoing rent reduction until the issue is resolved, and monetary compensation.

The Tenant's daughter attended the hearing and stated that the rental unit is a bachelor suite, and that the common wall between the rental units where the Tenant's bed is located, contains plumbing. The Tenant's daughter stated that as a result, running

water, an exhaust fan, and the opening and closing of cabinetry can easily be heard, and that the neighbouring occupant can often be heard at night turning on the bathroom fan, running water, opening and closing cabinets.

The Tenant stated that these disturbances are daily and often start around 11:00 P.M. and go on for hours. The Tenant stated that they have purchased earplugs, which have not helped, and that they are of the opinion that their neighbour should not make any noise between 11:00 P.M. and 6:00 A.M. The Tenant and Advocate argued that these disturbances are significant, that they have resulted in anxiety, and that they are so loud that the Tenant often has to sleep in another location or leave the rental unit.

The Agents acknowledged having received complaints from the Tenant regarding the sound of the exhaust fan and running water but stated that as it is an old wood frame building with shared walls between units, noise transfer is inevitable. They denied ignoring the Tenant's complaints, stating that they spoke with the occupant of the neighbouring unit, who denied making unreasonable noise, as well as other neighbours, who advised them that they have no noise complaints. The Agents stated that they also offered to move the Tenant to another unit, which the Tenant rejected. The Agents stated that the occupant of the neighbouring rental unit is entitled to use their rental unit for regular daily living, including running water and using the bathroom at night, and that doing so is neither unreasonable on its own, or causing an unreasonable disturbance.

Documentary evidence was submitted by the parties for my consideration including but not limited to audio recordings and written correspondence between the parties, their agents, or their advocates.

Analysis

Section 28(b) of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance. Residential Tenancy Policy Guideline (Policy Guideline) #6 states 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 have listened to the audio recordings submitted, and I find that they fall significantly short of establishing that the occupant of the neighbouring unit is causing an unreasonable amount of noise. While I appreciate that the Tenant may be disturbed by the noise transfer between the two units, as everyone's tolerance for noise is different,

given the types of noise being made (daily living noises such as running water, a bathroom exhaust fan, the washing of dishes and the opening and closing of cabinetry), and the fact that the rental unit is located in an older wood-frame multi-unit building, I do not find either the type of noise or the level of noise established in the audio recordings, to be objectively unreasonable. While the Tenant and their daughter argued that these noises prevent sleep and cause anxiety, I do not find that testimony is supported by the audio recordings submitted. Further to this, I find the Tenant's expectation that there be no noise of any kind between 11:00 P.M. to 6:00 A.M. to be both arbitrary and unreasonable, as it would unreasonably infringe on other occupants' rights to quiet enjoyment of their own rental units.

I also find that the Landlord has taken reasonable steps to address the Tenant's complaints, such as speaking with the occupant of the neighboring rental unit and the occupants of surrounding units, as well as offering to move the Tenant to a different unit in the building.

Based on the above, I find that the Tenant has failed to satisfy me that there has been a breach to their right to quiet enjoyment or that the Landlord was aware of a breach to their quiet enjoyment and failed to act reasonably to address it. As a result, I therefore dismiss the Tenant's Application in its entirety, without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). 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 17, 2023

Residential Tenancy Branch