



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding W Properties
and [tenant name suppressed to protect privacy]

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. In this application for dispute resolution, the tenant applied on November 20, 2022 for:

- an order for the landlord to comply with the Act, Regulation, or tenancy agreement; and
- recovery of the filing fee.

Those present 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 and Rule 7.4 requiring evidence to be presented.

Neither side raised an issue regarding service of the hearing materials.

Preliminary Matter

The tenant testified she applied to amend her application, and that she had submitted an amendment form and a Monetary Order Worksheet to the Residential Tenancy Branch and served it on the landlord. During the hearing, the tenant read the amendment application into evidence. As the landlord confirmed receipt of the tenant's amendment form and Monetary Order Worksheet, and was prepared to respond to them, I permitted the tenant to upload the items following the hearing, and will amend the application to include the tenant's claim to reduce rent in the amount of \$10,500.00, the rent they paid for the six months from June to November, 2022.

Issues to be Decided

- 1) Is the tenant entitled to an order for the landlord to comply with the Act, Regulation, or tenancy agreement?
- 2) Is the tenant entitled to a one-time rent reduction of \$10,500.00?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began December 15, 2013; rent is \$1,750.00, due on the first of the month; and the tenant paid a security deposit of \$825.00 which the landlord still holds.

The tenant submitted that they sent the landlord their first complaint regarding loud disturbances from a unit to the south (the "south unit") on November 24, 2020, and at the landlord's instruction, began logging and often recording the disturbances, which most frequently occurred between midnight and 6:00 AM. The tenant testified they have sent over 70 emails to the landlord, including over 45 audio and video files documenting the noises heard from a shared wall between the two units, which contains no pipes. The tenant testified the noises include banging, beeping, and vibrating noises. The tenant testified that due to the disturbances they have not been able to sleep through the night for over two years.

The tenant states that the landlord has been largely dismissive of their complaints, and failed to act in a timely way. The tenant claims the landlord did not begin an investigation until October 2022, almost two years after their first complaint. The tenant submitted that the landlord should have begun investigating and evicting the tenant in the south unit over a year ago.

The landlord testified that they have been responsive to the tenant's complaints, and have made reasonable efforts to address the noise issue by having professional technicians conduct numerous inspections and investigations.

The following timeline is sourced from the emails between the parties submitted as evidence by the tenant, and from the landlord's written submissions:

November 20, 2020 – email from landlord, asking the tenant if they have heard a very loud “bang” noise in the early morning.

November 24, 2020 – email from tenant, stating that she has been hearing the noise for at least a few months, off and on, and that it sounds like it originates a floor or two above the tenant’s unit.

February 4, 2021 – email from landlord, asking the tenant again to let the landlord know whether or not they have been hearing loud banging noises early in the morning.

February 9, 2021 – email from tenant, stating that she hears the noises often, and they sound like they come from one or two floors above the tenant’s unit.

February 10, 2021 – email from landlord, stating that they are investigating, and that as it is challenging to find the source, asks the tenant to share any information.

July 23, 2021 – email from landlord, stating that another tenant has heard a repeated loud “bang” sound in the early morning, which the other tenant thinks is coming from the subject tenant’s unit.

July 24, 2021 – email from the tenant, stating that she was away on the date in question, and is also being disturbed by the noises, stating: “We think the sounds are definitely coming from an apartment above us.”

July 26, 2021 – email from landlord, providing information to the tenant regarding the turnover in upper units, and that inspection notices have been given to the tenant’s floor and to tenants on the floor above.

July 29, 2021 – email from the landlord, asking the tenant for information so they can cross reference another noise complaint. The tenant responded that she heard several loud bangs on one of the dates in question.

September 7, 2021 – email from tenant, telling the landlord she is back after being away for one month, and is continuing to hear the noises, stating: “They come from directly above the living room.”

September 7, 2021 – email from landlord, stating that they have been investigating the source of the sounds over the last few months, including taking these steps:

- inspected all units in the same vertical region of the building from three floors below the tenants and up;
- interviewed most tenants in the same vertical region from three floors below the tenants to three floors above, finding that while people hear different sounds, only the subject tenant and the south unit tenant are hearing the loud banging;
- consulted their HVAC contractor, and on the contractor's advice, checked all the washers in the surrounding units and floors; and
- distributed a memo to neighbouring units to remind them of courteous living expectations.

The landlord asked the tenant to call the building's emergency team if the noise occurs between 10:00 PM and 9:00 AM, so that someone can visit the tenant's unit during the occurrence.

September 18, 2021 – landlord's submission states that in response to a complaint from the tenant on this date the landlord consulted with their "mechanical vendor," who advised that hot water pipes sometimes make similar sounds. No other tenants reported a noise complaint.

September 24, 2021 – email from tenant, stating that they obtained a recording of "the loud noise that comes and goes from what always sounds like upstairs." The tenant wrote that a crash was loud enough to rattle the glasses in her cupboard.

September 27, 2021 – email from landlord, stating that they will have the maintenance team check the floor the next day, and asking the tenant questions about the noise.

September 28, 2021 – landlord's submission states that the surrounding unit inspections were completed, no noise was heard, and the mechanical vendor replaced some parts the following day.

October 14, 2021 – landlord's submission states that washing machines in the surrounding units and floors were checked, but no issues were found.

January 14, 2022 – email from landlord, asking the tenant if they have previously been "confronted" by the south tenant, on what date, and if the tenant will make a video and call the landlord if the south tenant knocks on the tenant's door. The tenant replied, stating that the south tenant has not knocked on her door for a long time, and that the tenant will contact the landlord as requested if the south tenant approaches her again.

Saturday August 6, 2022 – email from tenant, stating that they have been hearing loud banging noises almost every day, about five times a day, lasting from 5 to 50 minutes. The tenant stated: “It is coming from the south side of the building and seems to come from up above our unit, although it’s hard to tell.”

Monday August 8, 2022 - email from landlord, stating that they will look into it and also send out an email to new tenants to remind them of the quiet hours after 10:00 PM. The landlord asked the tenant to call the on-call line if the noise occurs after 10:00 PM so the caretaker can check the source of the noise. The tenant replied, stating they were out of town for July, and that the noise is a loud, rhythmic mechanical banging, and sometimes a loud, deep mechanical vibration. The tenant stated the sounds are coming from the south side of the building, and that the night before the noise went on for over 45 minutes, then stopped at 10:00 PM.

September 7, 2022 – landlord’s submission states that after reviewing additional audio files from the tenant, the tenant’s unit was inspected by the property manager and the maintenance supervisor, and the co-tenant was advised that there will be additional investigation of the noise source and that outside professionals will inspect the mechanical and building systems, and open the drywall if needed.

September 12, 2022 – landlord’s submission states that the plumber conducted a noise investigation of the tenant’s floor and the floor above, finding no noise in the units.

September 13, 2022 – email from the landlord, asking the tenant if they heard anything that morning. The tenant replied with the three times in the early morning they heard a loud hammering noise.

September 16, 2022 – landlord’s submission states that the tenant reported noises in the walls, and that as the tenant will be away until mid October, the tenant would prefer not to have work done in the unit in their absence, so the inspections were paused.

October 18 – 26, 2022 – landlord’s submissions state that after the tenant reported hearing a beeping sound on October 18, maintenance checked an alarm in the unit, the drywall adjacent to the tenant’s unit was checked for alarms, the tenant’s wall was opened and checked for alarms or pipes, surrounding units were checked for alarms, and further investigations were completed.

October 28, 2022 – email from the tenant, stating that they have contacted the RTB as the situation remains unresolved, and there have been minimal updates from the

landlord. The tenant refers to the landlord checking a wall in the tenant's unit for pipes that week.

The landlord testified that they also provided numerous communications to other tenants to both investigate the sounds and to remind tenants about the building's quiet hours. The landlord testified that the tenant did not call the emergency noise line as repeatedly requested by the landlord, including when the noise had gone on for 45 minutes, as later reported by the tenant. The landlord submitted that this interfered with their ability to source the noise, as they missed opportunities to hear it in person. The landlord testified that the tenant called the noise line only once in 3 years, though the landlord had asked the tenant to alert them as soon as possible when the noise occurred. The tenant responded that they had called the line only once as when they did, the person could barely hear them because the noise was so loud, it took a very long time to log the complaint, and the tenants never received a response.

The landlord submitted that they determined that the source of the noise disturbances was the tenant in the south unit, and that they had served warning letters on the south tenant. The landlord testified they have since served the south tenant with a notice to end tenancy, and that a related RTB hearing is upcoming.

The tenant submitted that the landlord was aware of problematic behaviour from the south tenant as early as November 2021, as evidenced by the repeated knocks, and visits to the south tenant by the landlord and the RCMP.

Analysis

Order for landlord to comply

The tenant seeks an order for the landlord to comply with the Act, Regulation, or tenancy agreement, stating that the landlord failed to act in a timely and reasonable way in response to their complaints about noise disturbances.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. Based on the evidence before me, there is no question the tenant has experienced frequent and ongoing disturbances impacting their quiet enjoyment of the unit – they have provided substantial evidence in support, and testified that they have not been able to sleep through the night in two years.

Policy Guideline 6. *Entitlement to Quiet Enjoyment* states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected, and that a breach of the entitlement to quiet enjoyment includes situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. The Guideline states that 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.

Based on the evidence before me, including the numerous emails submitted by the tenant which record the series of actions taken by the landlord in response to the tenant's complaints, I find, on a balance of probabilities, that the landlord took reasonable steps to attempt to correct the noise issue.

The landlord has submitted that they determined that the source of the noise disturbances was the tenant in the south unit, the unit beside the tenant. Having reviewed the submissions of the parties, as summarized in the timeline, I note that the tenant inadvertently misdirected the landlord on at least six occasions from November 2020 to August 2022, as they told the landlord the noise was, or seemed to be, coming from above the tenant's unit. This is an easily understandable mistake, but provided the landlord with incorrect information regarding the source of the noise, which impeded the landlord's efforts to determine the true source of the disturbances.

As the landlord testified they have served a notice to end tenancy on the south tenant, having determined they were the cause of the noise disturbances, I decline to issue an order for the landlord to comply with the Act, Regulation, or tenancy agreement, as, based on the parties' submissions, I anticipate that the service of the notice will most likely result in resolution of the noise disturbances.

The tenant's claim for an order for the landlord to comply with the Act, Regulation, or tenancy agreement is dismissed, with leave to reapply should the noise issue persist.

Rent Reduction

The tenant is seeking a one-time rent reduction in the amount of \$10,500.00, the rent they paid for the six months from June to November 2022, due to the landlord's failure to respond to their noise complaints.

Section 65 of the Act provides that if an arbitrator finds that a landlord or tenant has not complied with the Act, the Regulations, or a tenancy agreement, the arbitrator may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Having found that the tenant's right to quiet enjoyment was not breached by the landlord, per section 28 of the Act, I find the tenant is not entitled to a rent reduction.

Filing fee

As the tenant is unsuccessful in her application, I decline to award the filing fee.

Conclusion

The tenant's claim for an order for the landlord to comply with the Act, Regulation, or tenancy agreement is dismissed with leave to reapply should the noise issue persist.

The tenant's claim for a rent reduction is dismissed without leave to reapply.

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: April 28, 2023

Residential Tenancy Branch