



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code OLC

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution made on March 17, 2023. The Tenants applied for an order that the Landlords comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement, pursuant to the Residential Tenancy Act (the Act).

The Tenants attended the hearing and were accompanied by KS, an advocate/friend. The Landlords attended the hearing on their own behalf. The Tenants and the Landlords provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, LB testified that the Landlords were served with the Notice of Dispute Resolution Proceeding package by registered mail. The Landlords acknowledged receipt.

On behalf of the Landlords, AF testified that the documentary evidence upon which the Landlords rely was served on the Tenants by attached to front door. The Tenants acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Are the Tenants entitled to an order that the Landlords comply with the Act, the Regulation, and/or the tenancy agreement?

Background and Evidence

The parties agreed the fixed-term tenancy began on December 1, 2019 and is expected to continue to December 1, 2024. The parties confirmed that rent of \$900.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$450.00, which the Landlords hold.

An addendum to the tenancy agreement confirms that various “commercial customers” use the rental property. The addendum states that the commercial customers “operate in designated areas and utilize restricted, low-traffic use of the property. It is understood that they will not interfere with or unduly or in any circumstances endanger tenants or visitors to [the rental property].” Further, the addendum states that when and if issues arise between the commercial customers and tenants, the “tenants are understood to have the balance of value in operations...[and] the balance of access concerns.”

CM testified that wants the Landlords to recognize the Tenants. CM referred to the addendum and submitted that issues are to be resolved in favour of the Tenants.

CM testified that another residential tenant on the property, J, has been conducting excavation work about 500 feet from the rental unit since October 2022. CM stated that this work has disrupted the Tenants. Specifically, CM stated that excavation work results in 8-10 dump truck loads per day. These loads pass by about 200-300 feet from the rental unit. CM also testified that J operates a generator all day and does not consider the impacts of noise from the work. CM also testified that J has severed water lines, has damaged his personal property, and has no dust control plan.

Similarly, LB testified the Tenants were told there would be “minor traffic” on the rental property. However, work continues every day from 7:00 a.m. to 8:00 p.m. LB added that dust and exhaust are a problem and that there has been no consideration to wetting the ground to keep dust under control. LB also testified that every time a truck or excavator drives by the rental unit the whole house shakes.

On behalf of the Landlords, AF testified that J is a residential tenant who lives on the rental property with his family. Although J conducts work on the rental property for the Landlords about 1-3 days per month, any other activity is related to J's employment elsewhere. AF submitted that the work completed by J on his own behalf is not covered by the addendum. AF also testified that he has passed the Tenants' complaints along to J whenever they have been received, about every two weeks since the work began.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 62(3) of the Act states:

The director 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.

Section 28 of the Act confirms that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit, and use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It 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.

In this case, I accept the Tenants' testimony regarding the nature and frequency of the work conducted on the rental property by J, another residential tenant. I find that the work is frequent and ongoing, and that the negative effects of the work – primarily dust and noise – have resulted in a substantial interference with the Tenants' ordinary and lawful enjoyment of the rental unit. Despite the submissions of AF to the contrary, these findings apply whether the work is completed on the rental property at the request of the Landlords or as part of J's employment elsewhere.

Further, although I accept that the Landlords have advised J of the Tenants' complaints, I find the Landlords have not taken reasonable or sufficient steps to address the dust and noise issues raised by the Tenants since the work began.

Accordingly, I order the Landlords to take further steps to protect the Tenants' right to quiet enjoyment of the rental unit under section 28 of the Act. Failure to do so may form the basis of a claim for compensation for damage or loss under section 67 of the Act.

Conclusion

I order the Landlords to take further steps to protect the Tenants' right to quiet enjoyment of the rental unit under section 28 of the Act.

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 14, 2023

Residential Tenancy Branch