



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall north real estate (pacific quorum) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions. I explained the hearing process.

The tenant stated she was not recording the hearing. She provided her email address to receive this Decision.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 28 minutes to allow the landlord the opportunity to call.

The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord was provided.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, the hearing continued.

Service

As the landlord did not attend the hearing, the tenant provided evidence of service.

The tenant stated she put the Notice of Hearing in the landlord's drop box on January 29, 2023. The tenant then assembled her evidence. On February 22, 2023, she served the Notice of Hearing and Application for Dispute Resolution by personally giving a copy to the landlord's receptionist to whom she delivers her rent cheque.

Further to the tenant's credible testimony, the tenant served the landlord on February 22, 2023, in compliance with the Act.

Issue(s) to be Decided.

- Is the tenant entitled to an order requiring the landlord to comply with the Act pursuant to section 62?
- Is the tenant entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The tenant provided uncontradicted testimony as the landlord did not attend the hearing.

The tenant stated she rents an apartment from the landlord for \$1,552.00 starting December 10, 2022. At the beginning of the tenancy, the tenant provided a security deposit and pet deposit each in the amount of \$750.00. The tenancy is ongoing. The tenant rents a ground floor apartment in an apartment building. She lives with her young child.

The tenant described two issues of noise and exhaust pollution. The first involved the fire alarm system and the second was unlawful parking below her window.

The tenant stated that the alarm system made repeated upsetting and disturbing sounds because of which the Fire Department investigated and instructed the landlord to conduct repairs. The tenant submitted complaints to the Fire Department and the City, copies of which the tenant submitted. The situation was resolved after two months (January and February 2023) of noise.

The tenant explained that the unit in which she lives with her child is on the ground floor and adjacent to the parking lot. Although no parking is permitted below her window, vehicles continuously parked there sometimes letting their engines run for lengthy periods of time. Other vehicles have parked in designated parking spots with engines running and lights on for prolonged periods, even all night. The noise and exhaust pollution enters her unit and disturbs sleep and peace.

The tenant stated her claims in the written submissions:

I spoke with an agent at the landlord tenant board earlier this week regarding a noise and pollution issue with another tenant's vehicle parked outside my bedroom window running all night, in and out all night several times and the lights and noise and pollution in my window while my child and I are sleeping.

Not only that it wakes us up and then we can't sleep and affecting our work and daycare routines. I have emailed [agent of the landlord].

The vehicle that frequently ran for hours belonged to an occupant who eventually was evicted and moved out. She called the police twice who did not attend. She called and emailed the property manager “almost every day”.

The tenant remained concerned that other vehicles will park in the same place.

The tenant requested the landlord post a “No Parking” sign below her unit to discourage people from parking their vehicles there.

The tenant requested permission to serve the landlord by email. She provided the email address of the landlord which they routinely have used throughout the tenancy to communicate. The tenant provided her email address for service.

The email addresses for service on both parties appears on the first page.

Analysis

Credibility

I have considered the evidence and testimony. I found the tenant believable, sincere and forthright. Her narrative accords with the submitted evidence which included pictures of idling vehicles by her unit and in the confines of the parking lot for the building.

Burden of Proof

The tenant must prove their claim on a balance of probabilities. This means that the facts are more likely than not to be true.

Loss of Quiet Enjoyment

As part of the tenancy agreement, tenants have a right to peace, quiet and privacy in their homes – a right that comes from the common law principle of quiet enjoyment.

Under section 22, the landlord must provide quiet enjoyment to a tenant which means freedom from unreasonable disturbance. Upon receiving a disturbance complaint from a tenant, the landlord is required to take reasonable steps to investigate and address the problem.

From the tenant's testimony and supporting copies of communication, the tenant informed the landlord of the disturbance caused by vehicles idling in the parking lot near her unit multiple times in January and February 2023. I accept the tenant's evidence in its entirety and find the landlord failed to respond in a timely manner to eliminate the problem. While the occupant who owed the idling vehicle has now moved out, the tenant has a reasonable concern that other vehicles will park in that same spot.

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment*. The idling vehicles were a substantial interference with the tenant's ordinary and lawful enjoyment. I find the landlord was aware of the interference and disturbance. While the landlord evicted the offending occupant, the landlord took inadequate steps to solve the problem in the meantime. The landlord has not posted appropriate signage.

The tenant is not making a claim for damages. She explained her present claim is for an order that the landlord provide quiet enjoyment from this time forward. The tenant explained the negative impact of the noise and exhaust on the family.

Under section 62, I can make any order necessary to give effect to the tenant's rights and the landlord's obligations.

I accordingly order that the landlord take all reasonable steps to provide the tenant with quiet enjoyment of her unit under section 22.

I order the landlord install appropriate signage to stop vehicles from parking beside the tenant's unit or idling with lights on.

The tenant may apply for an award for damages for loss of quiet enjoyment or such other order as circumstances warrant.

The parties may serve each other at the email addresses which appear on the first page.

Filing fee

As the tenant has been successful in this application, I award the tenant reimbursement of the filing fee of \$100.00 which the tenant may deduct from rent on a one-time basis.

Conclusion

The tenant's application is successful.

I accordingly order that the landlord take all reasonable steps to provide the tenant with quiet enjoyment of her unit under section 22.

I order the landlord install appropriate signage to stop vehicles from parking beside the tenant's unit.

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: May 15, 2023

Residential Tenancy Branch