



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC OLC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for the loss of quiet enjoyment and whether it is necessary to issue an Order requiring the Landlord to comply with the Act to ensure that the Tenant's right to quiet enjoyment is not breached.

Background and Evidence

The Tenant stated that she has been unreasonably disturbed by the occupant living in the rental unit above her, and that the disturbances have been occurring periodically over the past three years. The Tenant provided the following evidence that is relevant to her claim for compensation:

- The occupant's child disturbs her by riding his bicycle and playing basketball in his residence, during the daytime
- The occupant walks heavily in the morning when he gets up for work
- The occupant walks so heavily that her 11 year old daughter is often awakened
- The occupant plays his music so loudly, approximately two or three times per month, that the pictures on her walls rattle
- She has asked the occupant to be quieter but he has not complied
- She has verbally advised the Landlord of her concerns on many occasions and she provided written notice of her concerns to the Landlord on June 23, 2008, November 07, 2008, November 08, 2008, November 18, 2008, and December 05, 2008.

The Agent for the Landlord stated that the Tenant complained about noise caused by the previous occupant of the rental unit above her and there has been on-going conflict between the Tenant and the occupant who is currently living above her. He stated that the building is a wood framed structure that is not sound proof; that the noise created by the occupant living above her is caused by normal daily living activities; and he does not feel there is cause to take action against the occupant. He stated that the occupant's child is only with him one day per week and that he cannot control how the occupant walks in his rental unit.

The building manager stated that she did hear loud music emanating from the rental unit above the Tenant's rental unit during the afternoon on one occasion and she asked the occupant to reduce the volume, which he did. She stated that she attended the Tenant's rental unit, at the request of the Tenant, to witness the noise level and she

could not hear any noise coming from the upper rental unit. She stated that she periodically walks through the residential complex, paying special attention to the rental unit above the Tenant, and she has never heard excessive noise in that unit, other than the one incident already reported. She stated that she has not received complaints about the occupant living above the Tenant from any other occupant of the residential complex.

Analysis

I find that the Tenant has not established that the occupant living above her is unreasonably disturbing her quiet enjoyment. In reaching this conclusion I was influenced by the following:

- Most of the noise emanating from the rental unit above her are typical living noises, caused by children playing or occupants walking
- There is no evidence that occupants of the residential complex not living with the Tenant have been disturbed by the occupant living above the Tenant, which indicates that the noise caused by the occupant is not excessive
- The building manager has only witnessed excessive noise coming from the rental unit above the Tenant on one occasion, and she intervened to ensure the volume was reduced, which indicates that the noise caused by the occupant is not excessive
- There is no evidence to corroborate the Tenant's statements that the noise coming from the rental unit above her is excessive.

Conclusion

As there is insufficient evidence to conclude that the Tenant's quiet enjoyment of her rental unit has been unreasonably disturbed, I find that the Tenant is not entitled to compensation for being unreasonably disturbed. As there is insufficient evidence to

establish that the Landlord is not complying with the Act, I find there is no need for an Order requiring the Landlord to comply with the Act.

Dated: December 22, 2008