



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, OLC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the Act, an order that the landlord perform repairs, an order permitting the tenant to reduce rent until repairs are complete and a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have an obligation to minimize disruption in a rental unit above a commercial space?

Should the landlord be ordered to perform repairs?

Should the tenant be permitted to reduce rent until repairs are completed?

Is the tenant entitled to a monetary order as requested?

Background and Evidence

The parties agreed that the rental unit is an apartment located directly above a commercial unit on the ground floor. The tenancy began approximately 1 ½ years ago at a time when the commercial space was vacant. On or about April 1, 2008, the landlord rented the commercial space to a martial arts studio (the "Studio"). The tenant testified that since the Studio began renting the rental unit, she has heard an excessive amount of noise from the music played in the Studio, loud noises which she believes are created by kicking solid objects and loud shouts. The tenant testified that the noise continues throughout the day, usually stopping at approximately 9:30 p.m. but occasionally continuing until as late as 11:30 p.m.. The tenant provided a letter from another tenant, P.L., who lives several doors down from the rental unit. P.L. stated that the music played at the Studio was exceedingly loud and she has often left her suite to escape the noise. The tenant testified that she complained frequently to another

manager, who did not participate in the hearing, and that he had asked the owner of the studio to turn down the music but had been rebuffed. The tenant testified that she contacted a company specializing in soundproofing which estimated that it would cost \$2,000.00 to install soundproofing between the Studio and the rental unit. The tenant seeks an order that the landlord install soundproofing and permitting her to reduce her rent until repairs are completed. The tenant further seeks compensation for loss of quiet enjoyment in the amount of \$500.00 per month starting from September 2008. The parties agreed that in 2008 the tenant was paying \$650.00 per month and that in January 2009 the rent was increased to \$675.00 per month.

The landlord testified that the commercial area operated by the Studio had been developed according to the current building code and that he believed that a decibel reading had been taken and determined to be within appropriate levels. The landlord was of the opinion that because the tenant knew at the time she entered into the tenancy that the area downstairs was a commercial space, she should expect that more noise would be generated. The landlord opined that the noise generated from the Studio was not significantly more than what would have been produced by a coffee shop. The landlord suggested that the tenant enjoys below-market rent because of the fact that the rental unit is located above a commercial space.

Analysis

Section 28 of the Act provides that tenants are entitled to quiet enjoyment which includes freedom from unreasonable disturbance. Section 32(1) of the Act provides that landlords must maintain property in a state of repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. While I accept that the tenant was aware that a commercial space was immediately below the rental unit, the tenant could not have reasonably anticipated that the space would be used in a way that produced an excessive amount of noise. I am satisfied that the Studio produces excessive noise. I have based this decision on the testimony of the tenant and statement of P.L., both of whom live above the Studio and experience the disturbance on a regular basis and on the fact that the on-site manager felt the disturbance was sufficient to warrant a visit to the Studio to request that the music be

turned down. While a decibel reading may have taken place, there is no indication that a reading was taken in the rental unit or during a period when activities at the Studio were going on.

I order the landlord to install soundproofing or additional soundproofing, as the case may be, between the rental unit and the Studio no later than Tuesday, March 31, 2009. I appreciate that the soundproofing may not completely eliminate the noise from the Studio, but it is a reduction in noise that is the expected result as the tenant should expect to hear more noise from the space below than she would in an entirely residential building.

I find it appropriate to compensate the tenant for loss of quiet enjoyment from September 2008 – March 2009 inclusive. I find the tenant's claim of \$500.00 per month, more than 2/3 of her rent, to be excessive. I find that \$100.00 per month will adequately compensate the tenant. The tenant is awarded \$700.00 in compensation for loss of quiet enjoyment from September 2008 – March 2009 inclusive and a further \$50.00 as the filing fee paid to bring her application for dispute resolution. The tenant may deduct this sum from future rent owing to the landlord. If the landlord fails to install soundproofing by March 31, 2009, the tenant may deduct \$100.00 per month from her rent beginning in April until the landlord complies with this order. When the soundproofing has been installed, the tenant must resume paying her usual amount of rent.

Conclusion

The landlord is ordered to install soundproofing no later than March 31, 2009. The tenant is awarded \$750.00 and if the landlord fails to comply with this order, is permitted to reduce her rent by \$100.00 per month beginning in April until the landlord installs soundproofing.

Dated March 2, 2009.