



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNDC & FF

Introduction

This hearing dealt with an application by the tenant seeking compensation due to loss of quiet enjoyment of the rental unit. Both parties were present 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 oral evidence, to cross-examine the other party, and to make submissions during the hearing.

I amended the tenant's application to change the respondent to the legal name of the landlord.

Issue to be Determined

Did the tenant experience substantial interference with the quiet enjoyment of the rental unit due to the landlord's failure control the noise from the rental unit above?

Background and Evidence

The parties agree that the tenancy began on October 1, 2008 for the monthly rent of \$1,050.00 and a security deposit of \$525.00 paid on September 20, 2008. The tenancy is for a fixed term ending on September 30, 2009.

The tenant stated that she immediately had concerns and experienced problems with the neighbour residing above her. The noise issues were a result of the radio being played too loudly, the neighbour playing her guitar and singing, and other sounds associated and common in apartment or condo living.

The tenant stated that she experienced excessive and unreasonable noise levels from the neighbour usually between the hours of 7 to 8 a.m., 2 to 5 p.m. and again late at night between the hours of 11 p.m. to 12 - 2 a.m.

Initially the tenant attempted to discuss the situation with her neighbour but the situation became strained as the problem continued. The tenant would call the resident manager and eventually in February 2009 started to write complaint letters, by e-mail, to the resident manager.

The tenant acknowledged that the residential manager has been very good to work with but the tenant believes that the landlord could have taken more proactive or serious measures earlier to address the problem. The tenant is seeking compensation for the

serious impact this has had on her enjoyment of the rental unit and submits that a retroactive rent reduction of \$525.00 would compensate her for her loss. The tenant provided a written impact statement which described the stress, frustration and loss she believes she experienced during the last six months.

The landlord acknowledged that there was a noise issue between the parties but felt that it was largely a difference in lifestyles between the tenants and felt it was something that could be resolved. The landlord stated that both tenants believed that the other was disrupting their life and quiet enjoyment.

The landlord indicated that the noise complaints were usually during the day and during times when increased noise is both expected and not unreasonable. The resident manager stated that she would respond to the tenant's complaint and go discuss these with the other tenant. The resident manager acknowledged that this would stop the noise complaints for a short time but then it would begin again.

The landlord submitted that they did not receive any other noise complaints for this individual. As a result the landlord believed that it was not reasonable to take more serious measures as it was a lifestyle difference between the dispute tenants. The other tenant is a musician and it was acknowledged that she would sing and play the guitar during the day.

The landlord offered the tenant a new rental unit in March 2009 in an attempt to resolve the dispute. The tenant did not believe it was reasonable to expect her to move, especially given her position she was the one experiencing all the disturbances. Ultimately, the other tenant was offered a new apartment and since she moved the issue has been resolved.

The tenant responded by pointing out to the resident manager that she didn't call her at night when the noise was occurring, but waited until the next morning and this would contribute to the perception that the noise was only during daytime hours. The tenant also elaborated that her personal life was very stressful at the time that the offer to move was made and given all the circumstances it was not a reasonable option at the time. The tenant acknowledged that since the other occupant has moved there have not been any further noise problems. However, the tenant argued that it is not reasonable for her neighbour to use her living accommodation as a music studio and the resulting noise is unreasonable.

Analysis and Findings

The covenant of quiet enjoyment is defined as follows:

At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."¹ A landlord does not have a reciprocal right to quiet enjoyment.

Under the *Act* the right to quiet enjoyment includes reasonable privacy, freedom from unreasonable disturbance, exclusive possessions and use of common areas without significant interference.

A breach of the covenant of quiet enjoyment can be established if the tenant can prove that there has been frequent or ongoing interference, either by the landlord or preventable by the landlord, which significantly interferes with the tenant's use and enjoyment of the rental unit. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I find that the dispute largely resulted due to significantly different lifestyles between the two parties. The tenant is currently a student and uses the rental unit for studying as well as living and recreation space. The two parties also appear to have had different sleeping cycles and woke up at different times as evident from the tenant's complaints about hearing the neighbour's alarm going off in the morning hours. Then there was the problem that the neighbour is a musician and liked to sing and play the guitar.

I agree with the landlord's attempt to work out a solution to this dispute. Both the tenants are entitled to the use of their units and legitimately believed that the other was making unreasonable impacts on their enjoyment.

I find that the tenant was attempting to adjust and deal reasonably with the situation, in conjunction with the landlord, but in by February 2009 had reached her limit. She then wrote the landlord on February 2, 2009 indicating that she did not believe the noise from her neighbour was reasonable and specifically requested the "next steps" from the landlord to address the problem.

I find that the landlord did respond and take reasonable steps throughout the process and specifically after receiving written notice of the breach from the tenant. The landlord first offered the tenant a new apartment, which she rejected, and subsequently offered a new apartment to the other tenant who accepted. Since that tenant moved the problem has been resolved as both parties acknowledged in the hearing.

In order to find a breach of the covenant of quiet enjoyment I have to find that the landlord failed to take any reasonable measures to remedy the problem. I accept that once the tenant reached the point that the situation was no longer tolerable and she wrote the landlord making that clear, the landlord took more than reasonable steps to resolve the issue and found a solution.

Therefore, having considered the evidence and positions of the parties I find that the tenant is not entitled to any compensation related to a breach of quiet enjoyment. Although I accept that the tenant was disturbed by the noise from her neighbour, I find that the landlord took reasonable steps to address the tenant's complaints about the noise.

Finally, I find that the tenant failed to mitigate her own loss when she did not accept the landlord's offer to move her into another rental unit. While I appreciate that it was not the best time in the tenant's personal life to move, it was her responsibility to take a reasonable measures to mitigate her losses. While I appreciate that the tenant may have felt like she was being punished by being asked to move, it was a reasonable solution to the dispute.

Conclusion

I find that the tenant has not established a monetary claim based on the breach of the covenant of quiet enjoyment. I have determined that the landlord took reasonable steps to address the tenant's noise complaints.

Dated June 23, 2009.

Dispute Resolution Officer