



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC FF

Introduction

This is an application under the *Residential Tenancy Act* (the “*Act*”) by the tenant for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant, an agent for the landlord (the “agent”) and a resident manager for the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The parties confirmed receiving the evidence package from the other party prior to the hearing and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

A fixed term tenancy began on April 1, 2010 and reverted to a month to month tenancy as of March 31, 2011. Monthly rent is due on the first day of each month and was originally \$700.00 and increased over the course of the tenancy to the present amount of \$730.10 per month. The parties agree that the landlord continues to hold a security deposit of \$320.00 which has carried over from an previous tenancy agreement.

The tenant testified that she is not seeking compensation but is seeking an order that the landlord keep the rental unit quiet so that she can enjoy “peace and quiet”.

During the hearing, the tenant was asked to provide specific examples of noises and events and the dates that they occurred. The tenant was unable to provide specific dates and stated "I was not expecting these types of questions".

The agent stated that the rental unit is 1 of 72 units in a wood structure that was built in 1973. The heating system is comprised of hot water heating. There are three, 3-story buildings of which the rental unit is located in one building comprised of 72 rental units.

The tenant, who stated that she is hard of hearing, stated that she wants the rental unit to be quieter but admits to writing to the landlord on only one occasion on or about January 27, 2013. The tenant did not date her letter to the landlord, but the agent stated that he received the one document the tenant was referring to, on January 27, 2013. In that letter, the tenant refers to stomping and running on the spot, and sounds of jumping off of furniture.

The agent stated that based on that letter which references noise coming from the upstairs neighbours, the agent spoke to the tenants living upstairs and the upstairs tenants apologized for any noise or inconvenience they caused the tenant. The agent also stated that due to the tenants living upstairs having a new baby recently, the agent has offered for that family to move to a two bedroom unit as soon as one becomes available, which will be located in a different area from the tenant. The agent stated that he expects a two bedroom unit to become available in two or three months from today's date.

The tenant stated that she was not satisfied with the agent's response above, however, was unable to provide specific dates of other incidents in support of her application during the hearing. The tenant did not provide any further written complaints to the landlord since January 27, 2013.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The tenant was unprepared for this arbitration hearing by not having specific dates and details of events of those dates available in support of her application. Lack of preparation on the part of the tenant, does not constitute a breach of the Act, regulation or tenancy agreement on the part of the landlord. The tenant stated that she was "not expecting these types of questions" during the hearing.

The parties agree that one letter submitted on or about January 27, 2013 was submitted to the landlord and the landlord's agent immediately followed up on the letter by advising the upstairs tenants of the complaint made to the landlord, and offered the upstairs tenants a different rental unit in a different location away from the tenant to assist the tenant. This was not satisfactory according to the tenant.

At the very least, I would have expected the tenant to document specific dates and times of noise concerns and to have communicated in writing to the landlord so that the landlord could follow up on those concerns. In the matter before me, the tenant complained once, and the landlord provided evidence that the complaint was addressed in a timely manner and has not received further complaints from the tenant.

Therefore, **I dismiss** the tenant's application in full due to insufficient evidence, without leave to reapply.

As the tenant's application did not have merit, I do not grant the tenant the recovery of her filing fee.

Conclusion

I dismiss the tenant's application in full due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 01, 2013

Residential Tenancy Branch

