



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINGS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and the landlord's agent attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. Neither party provided documentary evidence to the Residential Tenancy Branch or to the other party in advance of this hearing. I have reviewed all oral evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The tenant testified that he has been significantly disturbed by another tenant living above his unit. Everything used to be fine with the other tenant but he went away and when he came back he was sick and started to sleep in the day and be up all night. This other tenant also seems to have a 'revolving door' of roommates coming and going who also make a lot of noise. The tenant above has earned the name of Thumper as he thumps across his floor which disturbs the

tenant. The tenant above is also involved with heavy drug use and has dealers at his unit and people who throw stones at his window which often hit this tenant's window and cars belonging to other tenants.

The tenant testified that he has verbally complained to the landlord's agent and was asked to put his complaints in writing. The tenant testified that he knows that the landlord's agent is doing everything he can but the noise escalates from Thursday night onward over the weekend when the landlord's agent is off. Another tenant in the building had passed away and some drug dealers, which the tenant above let into the building, went into that deceased tenant's unit and cleared it of anything valuable.

The tenant testified that he thinks his witness KG who is another tenant living in the building has also put complaints in writing to the landlord. The tenant testified that although the landlord's agent is doing an excellent job the tenant seeks to have the tenant above evicted due to the continuing disturbances.

The landlord's agent testified that he got the first written complaint from the tenant on June 11, 2016 prior to that the tenant had only made verbal complaints. There was also a noise complaint from the police about this other tenant. The other tenant has now been issued with two breach letters concerning disturbances and was given an ultimatum that he must either get rid of his roommate or face eviction. The other tenant did get rid of the roommate.

The landlord's agent testified that the company has a policy that they will issue three breach or warning letters and then an eviction Notice as the landlord has to have sufficient reason and evidence to support an eviction. On December 06, 2016 they received the second compliant letter from this tenant about the other tenant and that was why the second breach letter was served.

The landlord's agent testified that they have not received any other written complaints about this other tenant. It was explained to the other tenant that if they receive any further complaints then he will be issued with a One Month Notice to End Tenancy for cause. The landlord's agent feels that they are acting in compliance with the *Act* and regulations.

The tenant's witness KG testified that he has also been disturbed by the other tenant but has not yet put anything in writing to the landlord.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows: S.28 of the *Act* protects the tenant's right to quiet enjoyment of a rental unit and states:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The landlord must protect each tenant's rights under the *Act* but in order to do so the landlord must have sufficient evidence to act upon when dealing with another tenant that is causing a disturbance.

The tenant agreed that the landlord's agent is doing an excellent job in dealing with this other tenant. The landlord's agent outlined the steps they have taken to deal with the complaints made against the other tenant.

I am satisfied that the landlord is complying with s. 28 of the *Act* and has issued two breach or warning letters to the other tenant and informed the other tenant that if there are any further issues he will be served with a One Month Notice To End Tenancy for cause. The landlord must have sufficient evidence to support any reasons given on a One Month Notice and I find the landlord is following the necessary steps to protect this tenant's right to quiet enjoyment.

Consequently, no orders will be issued today; however, I do caution the landlord to ensure they continue to monitor and follow up on any further noise complaints and take any necessary action against any offending tenant.

Conclusion

Due to the above I dismiss the tenant's application. If the landlord does not continue to comply with s. 28 of the *Act* the tenant is at liberty to reapply.

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: December 19, 2016

Residential Tenancy Branch