



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: PSF, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order directing the landlord to provide services and facilities and for a monetary order for the recovery of the filing fee. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself and the landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The landlord's agent ("landlord") stated that the tenant had named an employee of the landlord in his application for dispute resolution. The rental property is owned by an organization that provides accommodation for persons with mental health issues. Based on the tenancy agreement that was signed by both parties, I amended the name of the landlord to reflect the organization that provides this accommodation.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to the remedy he has applied for?

Background and Evidence

The tenancy started in November 2012. The rental unit is located in a building that houses a total of 36 rental units on four floors.

The first floor which is at ground level has offices. The tenant's unit is on the third floor. The tenant uses a wheelchair and needs an apartment that will accommodate the use

of a wheelchair. The apartment building has a limited number of wheelchair accessible rental units. There are none that are currently vacant.

The tenant testified that since the start of tenancy he has been abused by the landlord's staff and other tenants which makes him fearful for his life. The main reason for the tenant's application is a noise complaint against the occupant of unit above his (#405). The tenant stated that the occupant of #405 uses a power tool constantly and also flushes the toilet at least 100 times during a 24 hour period. The tenant stated that the occupant of unit #405 is a drug addict and is sometimes awake for several days and creates nonstop noise disturbances. The tenant stated that he has made multiple complaints to the landlord and the landlord has not taken any action.

The tenant testified that there is no staff on duty at night. The landlord testified that the building is staffed up to 2:00am with regular staff and between 2am to 6am security guards patrol the property.

The landlord stated that every complaint is documented and addressed. The landlord provided an extensive number of documents to support her testimony. The landlord stated that upon receiving noise complaints made by this tenant, her staff attended the tenant's rental unit and were unable to detect any unusual noise that is not associated with everyday living.

The landlord stated that the tenant also made multiple complaints against the previous occupant of unit #405 and when it became vacant, the landlord offered it to this tenant. The tenant denied having received this offer and the landlord agreed that it was a verbal offer. The landlord stated that if a unit that is wheelchair accessible becomes vacant, it will be offered to this tenant.

The tenant went on at length about how he was unfairly treated by government in general and that no one was willing to hear him out. The tenant stated that he was harassed and abused by the occupant of #405, by the landlord and by other tenants. I gave the tenant ample time to explain his situation but after 85 minutes of hearing time the tenant continued to say that he felt that he was not heard.

The landlord agreed to provide a notice to all occupants of the building to remind them of quiet time between 11:00pm and 9:00am. The landlord also agreed to have a talk with the occupant of #405 to let him know that there were noise complaints against him and that he should be mindful of the occupants of units on the floor below.

The landlord offered to connect the tenant with an outreach worker and the tenant agreed to engage in the activities that the outreach worker organized. The landlord also offered to cover the filing fee of the tenant.

Analysis

Based on the testimony of both parties, I find that it is possible that the occupant of #405 is creating noise disturbances that are not associated with normal everyday living. However noise disturbances caused by movements on an upper floor are not unexpected and persons occupying an apartment are required to accept the fact that that they will hear noises from the occupants of the unit above.

The landlord has agreed to the following:

1. Send a notice to all occupants of the building reminding them about the quiet time (11pm to 9am).
2. Conduct a meeting with the occupant of #405 to discuss quiet times and noise complaints
3. Connect the tenant with an outreach worker
4. Allow the tenant to make a one-time deduction of \$100.00 from rent that is due on December 01, 2018.
5. Offer a wheelchair accessible unit to the tenant when one became vacant.

Conclusion

The landlord has agreed to carry out the actions as stated above.

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: November 26, 2018

Residential Tenancy Branch