



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LTD.PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of quiet enjoyment, in the amount of \$2,900.00. The tenant also applied 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 herself. The landlord was represented by their agent.

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*.

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 compensation for the loss of quiet enjoyment? Did the landlord address the complaints of the tenant in a timely manner? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 01, 2018 for a fixed term of one year. The monthly rent was \$1,460.00. The tenant moved into unit #213. The tenant testified that she was told by the landlord's agent that a single person lived in the unit above the one that the tenant was looking to rent. The tenant entered into the agreement and moved into the rental unit in early January 2018.

On January 11, 2018, the tenant wrote a letter of complaint to the landlord regarding noise disturbances from the unit above hers (#313). This was the first of many letters to the landlord complaining about the noise made by a toddler running around the apartment at night. The landlord addressed each letter as they came in and responded to the tenant with an update of action taken.

Some of the letters consisted of noise complaints against the occupant of the unit below. The landlord responded to the complaint and addressed this issue with the concerned occupant. The tenant agreed that the noise disturbances from the unit below hers, stopped shortly after.

However the noise disturbances continued from unit #313 and the tenant continued to write letters to the landlord complaining about the toddler running around the apartment. The landlord had a meeting with the occupant of #313 and when the problem did not get resolved and this tenant kept writing letters of complaint to the landlord, the landlord served the tenant in unit #313 with a warning letter. The landlord also conducted an investigation and spoke with the occupants of all units located around and below unit #313. The landlord testified that no other occupants complained about noise disturbances.

The landlord also stated that the previous tenant who resided in the unit prior to this tenant had not made even one noise complaint against the occupants of #313. That tenant had moved out because he had purchased a home.

The tenant agreed that she visited unit #313 to complain about noise disturbances and called the police a few times. The tenant confirmed that the police visited unit #313 on at least three occasions. The landlord testified that the occupants of unit #313 informed the landlord that they were feeling stressed and harassed by the multiple visits from this tenant and the police and therefore they gave the landlord notice to end their tenancy effective February 28, 2018. The landlord informed the tenant that the occupants of unit #313 would no longer be residing in the unit effective February 28, 2018.

The tenant agreed that sometime in the middle of February 2018, the landlord informed her that the occupants of unit #313 would be moving out. The tenant stated that she had already made plans to move out and decided to stick with her plans. The tenant added that she did not want to take the chance that she would be disturbed by the new occupants of unit #313.

The tenant stated that had she known that there was a toddler in the unit above, she would not have moved in. She testified that the agent who showed her the unit told her that a single person lived upstairs. The landlord responded by stating that the tenancy agreement for unit #313 was signed by a single person in 2015 and since then his family status had changed but he had not informed the landlord. The landlord also added that the building complex rents to families.

The landlord allowed the tenant to break the fixed term lease without penalty. The tenant moved out on March 10, 2018. The tenant stated that it cost her \$1,200.00 for moving costs. The tenant is claiming compensation for the loss of quiet enjoyment in the amount of \$2,900.00 which is approximately the amount of rent that tenant paid for the months of January and February 2018. The tenant is also claiming the recovery of the filing fee of \$100.00.

Analysis

Based on the testimony of both parties, I find that the landlord addressed the multiple complaints of the tenant in a timely manner. The landlord also kept the tenant informed of action taken and developments.

I find that the landlord did not deliberately provide the tenant with misinformation regarding the occupants of unit #313. The tenancy agreement was signed by a single person in 2015 whose family status had changed since then but he had failed to inform the landlord. In any event, having a child in the unit did not contravene the landlord's rental policies as the landlord welcomed families as tenants.

The tenant's main complaint consisted of noise disturbances associated with normal every day activities of children. The noise disturbances may inconvenience the tenant but are to be expected when the upper level is occupied. Persons occupying a unit below other rental units are required to accept the fact that they will hear noises from the upstairs. I find that the tenant has not proven that the noise disturbances were deliberate on the part of the occupant of unit #313. The tenant was also aware that this building complex is rented to families which could include children.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

Based on the testimony of both parties, I find that the landlord acted responsibly and took steps to resolve the issues presented in the tenant's complaints. Eventually the family with the toddler moved out due to the angst created by multiple visits from the tenant and the police who attended unit #313 in response to the tenant's 911 calls.

When the family moved out at the end of February 2018, the tenant had the opportunity to continue to reside in the rental unit or move into unit #313. The tenant chose to end the tenancy and move out.

I find that the tenant may have been inconvenienced by the actions of the toddler but as stated above, noise associated with everyday activities is not unexpected and does not justify a claim for compensation for the loss of quiet enjoyment. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment and therefore must also bear the cost of filing this application.

Conclusion

The tenant's application is dismissed in its entirety.

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 27, 2018

Residential Tenancy Branch