



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

The tenant applies for an order that the landlord take steps to address her repeated complaints about noise emanating from the suite above hers.

Both parties attended the hearing, the landlord by its agent Ms. E.S. and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord failed to protect the tenant from unreasonable disturbance by noise from the suite above hers? If so, what is the appropriate order or direction to the landlord in the circumstances of this case.

Background and Evidence

The tenant is a seventy five year old woman living alone in this one bedroom apartment. The apartment building itself is a conventional, wood-frame-construction apartment building.

The tenancy started in 2012. Currently the monthly rent is \$995.53. The landlord holds a \$412.50 security deposit.

Since at least July 2018, the tenant has been complaining to the landlord on a regular basis about noise from the rental unit above hers. She has complained about hard soled shoes on the floor above and the sound of a dog. In late 2018, the complaint was particularly regarding an “incessant vibration and humming.”

By December 2018 the tenants above had moved out. The apartment remained vacant for three months or so until April 2019 when new tenants moved into the two bedroom apartment. It appears the new tenants were two couples with a dog.

Again, the tenant became bothered by humming and vibration, though of a different kind than before. She would also hear the sound of something heavy, perhaps on wheels, being dragged across the floor. The noise would often come in the middle of the night; at 2:00 and 4:00 a.m. She asked the non-resident building manager L. to come in and listen to the noise or even to sleep over in order to hear the early morning noise but he refused saying he was unavailable.

The four tenants above have now broken apart. As of January one of the four remains and the dog is gone. A young woman whom the tenant has met, has moved in. The tenant the brother of one of the tenants appears to be there all the time. She notes the sound has lessened though she still hears the vibration at times. It may be a video game noise.

In response the landlord's representative Ms. E.S. testifies that the landlord has taken all reasonable steps to investigate the alleged noise and has discovered nothing. She herself attended at the upper premises on more than one occasion when the first set of tenants, two seniors, were there. She could find nothing that might create a humming or vibration noise nor anything that might be pulled across the floor. Nevertheless, the upper tenants were informed of the complaints and proceeded to place rugs on their floor in an attempt to muffle sound.

Ms. E.S. produced a letter from November 2018 sent by the former tenants stating they were moving out because of this tenant's “erroneous” complaints about their normal living noises. It was creating too much stress for them.

She says that on one occasion she was in the upper unit, sitting and talking to the tenants when this tenant began hitting the ceiling/floor with a what she thinks was a broom handle.

Ms. E.S. has offered the tenant a top floor apartment but it was declined. She concludes that the tenant is a person overly sensitive to noise.

Analysis

By s. 28 of the *Residential Tenancy Act* (the “Act”) a tenant is entitled to freedom from unreasonable disturbance. If that disturbance is coming from other tenants of the landlord, or occupants in their suites, a landlord will be obliged to take reasonable steps in the circumstances to see that the tenant’s entitled to freedom from unreasonable disturbance is maintained. A failure to carry out that obligation can lead to a tenant being granted relief; compliance orders and/or monetary awards, by an arbitrator acting under the *Act*.

In this matter I find it disconcerting that the landlord would issue three warning letters to the first tenants living above this tenant without taking steps to confirm the noise when the tenant says she is experiencing it.

Nevertheless, in all the circumstances of this case the evidence presented by the tenant falls short of that necessary to show a breach of the landlord’s obligation to maintain the tenant’s right to freedom from unreasonable disturbance. It follows that no compliance order will issue.

First, there is little objective evidence from which it can be determined that the sounds or noise reaching this tenant’s apartment are beyond or in excess of that which might be considered reasonable, having regard to the level of accommodation, namely an older, wooden frame building, rented for what might be considered a modest rent. For example, it is not clear whether the chief noise complained of, the humming/vibration noise is in the nature of a faint background noise or a tooth rattling experience.

Second, there is little in the way of corroboration of the tenant’s claim. She has had family assist her in writing complaint letters and has had Ms. W.S. as her advocate since at least November 2018 yet none testified about the noise; the fact of it, the type of noise, the frequency of it or the amplitude of it.

When coupled with the investigative work actually done by the landlord, the evidence leaves significant doubt and simply does not justify a finding that the landlord has breached its obligation to maintain the tenant’s right to freedom from unreasonable disturbance.

This is not to say the tenant is wrong, merely that she has not proved her claim at this hearing on a balance of probabilities.

There are fewer and different tenants living above now and it remains to be seen whether the tenant will continue to complain about noise. I would suggest that if she does, then the landlord take steps to physically attend and definitively authenticate or disestablish the fact of, the kind of, the origin of and the amplitude of the complained of noise in the tenant's suite.

Conclusion

The tenant's application is dismissed.

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: January 28, 2020

Residential Tenancy Branch