



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>O (ERP)</u>	Other - Order Landlord to Comply with the Act, Regulations, Tenancy Agreement
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to compel the landlord to comply with the Act for health or safety reasons. Both the tenant and landlord were represented and each gave affirmed testimony in turn.

Preliminary Issue(s)

At the commencement of the hearing the agent of the landlord challenged the jurisdiction of the matter on the basis that the rental unit is situated in a complex that is used as lodging for vacation and travel.

Section 4(e) of the Act does state that the Act does not apply to living accommodation occupied as vacation or travel accommodation. However, this is a long-term tenancy and the unit has served as the principle residence of the tenant for approximately six years. Therefore I found that the relationship of the parties before me does not relate to

vacation accommodation and that the Residential Tenancy Act does apply to the tenancy.

The matter proceeded on its merits. All of the parties were then affirmed and testimony was heard from both parties.

Issue(s) to be Decided for the Tenant's Application

The tenant was seeking compensation of \$10,000.00 for the devaluation of the tenancy due to threats, harassment and an alleged assault by the landlord. The tenant was also seeking an order to compel the landlord to comply with the Act by not interfering with, abusing nor accosting the tenant.

In regards to the tenant's claim for an monetary in compensation for the devaluation of the tenancy, the issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities that the tenant suffered a loss due to the landlord's neglect or failure to comply with the *Act*?
 - Has the tenant submitted proof that the specific amount being claimed in compensation is validly justified?
- Whether or not the tenant is entitled to an order under section 62(3) compelling the landlord to comply with the *Act*. This determination is dependant upon answers to the following questions:

- Has the landlord violated section 28 of the Act by interfering with and diminishing the tenant's right to quiet enjoyment of the rental unit?
- Is there a significant risk that the offending conduct will continue or recur?

The burden of proof is on the Tenant to prove that monetary compensation is justified under the Act and that an order to force the landlord to comply with the Act is warranted by the circumstances.

Background and Evidence

The tenant submitted into evidence, a written statement outlining the tenant's allegations and detailing specific incidents of abuse and harassment by the landlord. The tenant provided witness contacts, and written testimonies from two individuals, one of whom testified in support of the tenant's testimony with regard to two incidents. The tenant testified that he has been a respectful courteous tenant and long-term resident in the complex. The tenant testified that he had replaced an air-conditioning unit prior to which he had discussed the matter while he was paying rent to the manager's associate, who had kindly gave him information about where to find a unit to purchase. The tenant testified that he was never advised at that time that this action would be considered a violation of the rules or tenancy agreement, but the following day was subjected to a verbal tirade from the manager and that there have been numerous incidents since in which the landlord has exhibited hostile and harassing behaviors and subjected the tenant to verbal abuse. The tenant and the witness described one alarming incident that involved the landlord shoving the tenant without any provocation. The tenant stated that as a resident for six years he has recently found his quality of life has deteriorated beyond tolerance because the landlord has issued threats that he will find a way to end the tenancy and the tenant stated that he must always look over his shoulder dreading what may come next. The tenant wants the harassment to stop and

feels he is owed compensation by the landlord for the landlord's willful and intentional contraventions of the Act.

The landlord testified that at no time did he engage in the conduct described. However the landlord thoroughly agreed that conduct of this nature would never be appropriate. The landlord testified the tenant had violated rules by replacing the air conditioner with a larger unit without permission. The landlord also took issue with other conduct allegedly perpetrated by the tenant in the past. The landlord provided written evidence including an email evidently solicited from the owner for the purpose of this hearing, dated September 10, 2008, praising the manager's ability to manage the building and then proceeding to put forth a litany of concerns pertaining to the tenancy dating back years in the past. Another letter from a resident in the complex dated September 25, 2008, talks about alleged incidents of speeding by the tenant that occurred on September 16 and 18, 2008. I note that these events purportedly transpired *after* the dispute application was already filed. Another letter submitted into evidence, dated September 10, 2008, directed the tenant to only communicate with the manager, _____, in future, rather than with the associate who evidently collects rent, "*to help out on my own time*". The landlord also included a hand-drawn map of the complex, a copy of a list of the tenants dated June 2008, a letter dated May 2, 2008 from the landlord addressed to another tenant discussing concerns about this other tenant's conduct and several photos of this other tenant's unit.

The landlord testified that the applicant tenant was at fault for not complying with the rules, but that regardless, the landlord had never resorted to abusing, haranguing, or harassing the tenant.

Analysis

I have no hesitation in finding that the tenant's testimony and evidence is credible.

I find that the evidence submitted by the landlord which primarily consisted of solicited testimonials regarding unrelated incidents not to be particularly relevant to the issue at

hand and I did not find this to be helpful in the determination of whether or not the tenant's allegations of harassment are valid. Even if I accepted the landlord's evidence as true, the fact that there were alleged transgressions by this tenant or complaints about the tenant in the past or after the application was already filed, are all immaterial to these proceedings. The landlord's evidence relating to alleged violations of the rules by some other resident who had previously lived in the complex is also completely irrelevant to the matter before me.

Monetary Order for Compensation

In regards to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that if the tenant's claims in regards to the conduct of the landlord were true, there is no doubt that this would constitute a serious and inexcusable violation of the Act by the landlord and would support the tenant's claims that he has endured a loss of value to the tenancy. However, whether I believe the tenant's allegations or not, I find that the burden of proof has not sufficiently been met in the face of a categorical denial by the landlord.

In a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because, as mentioned above, one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving during these proceedings that damages and compensation being claimed is fully justified under the Act. When evidence only consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. In light of the above, I find that I can not grant compensation to the tenant at this time.

The landlord has denied the conduct and has actually gone so far as to condemn such conduct. While I have felt it necessary to decline an award of compensation to the tenant at this time, I feel it necessary to caution the landlord that should such actions as described by the tenant occur in future, the tenant remains at liberty to bring up this

same matter in another application seeking retroactive compensation for damages and loss.

Protection of tenant's right to quiet enjoyment

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; 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*]; and use of common areas for reasonable and lawful purposes, free from significant interference.

In situations where the landlord intends to inform the tenant of concerns with regard to the actions of the tenant relating to rights and obligations under the terms of the tenancy, the landlord has options to communicate these concerns in a professional and business-like manner either in person, by telephone or in writing. Even if the tenant does not cooperate and wantonly disregards the concerns and continues to violate the agreement or the Act, the landlord still has options, such as issuing a warning letter, progressing to a notice to end tenancy and finally making an application for dispute resolution to obtain an order. I find that the options open to a landlord do not include any form of bodily contact, threatening, yelling, cursing, name-calling, racial slurs, exhibiting hostile demeanour such as staring or scowling or any other behaviour aimed at attempting to engender fear or discomfort for the tenant. I find that this kind of persistent or repeated conduct on the part of a landlord would be seen to be in violation of section 28 of the Act in that interaction of this or similar nature would interfere with the tenant's right to peaceful enjoyment of the rental unit.

For example if the tenant has installed an air conditioner that the landlord believes may constitute a violation of the tenancy agreement, the landlord could make this known in a way that exhibits some basic consideration for the tenant's perspective and without disparaging the tenant on a personal level. If it turns out that the tenant does not cooperate or if the parties are unable to find a compromise, then the landlord is always

at liberty to make an application and obtain a decision as to whether or not the relevant term can be enforced. A tenant is not to be subjected to hurled insults, tirades, threats or other indignities.

I note that while the landlord has denied engaging in the inappropriate conduct being alleged, the landlord has concurred that such conduct is not acceptable and has no place in dealing with tenants.

Accordingly, I find that the landlord would therefore have no valid reason to object to the issuance of an order that compels the landlord to comply with the Act by refraining from any form of bodily contact with this or any other tenant, refraining from threatening, yelling, cursing, making racial slurs, or name-calling and to avoid exhibiting unseemly or hostile demeanour, making derogatory comments to other people about the tenant or any other bullying behaviour that could be perceived as an attempt to humiliate, engender fear or discomfort for a tenant. Should the landlord violate this order at any time in the future, the tenant may apply for compensation and damages including a retro-active abatement in rent in recognition that the tenancy has been devalued by the persistent deprivation of peaceful enjoyment by the landlord.

I must point out that the Act does not specifically require parties to be polite, mature nor professional in regards to communications between a landlord and tenant. But I seriously encourage both of the parties to be civil and to candidly express concerns that may arise. That being said, I find that an order requiring that all communications between the parties must be in written form may help to prevent new misunderstandings from developing and halt further deterioration of this business relationship.

In regards to the dispute over the air conditioner, I find as a fact that the tenant's action in installing the air conditioner under the circumstances and the alleged deficiencies in housekeeping" do not constitute a violation of a material term of the tenancy and as such cannot be used as a basis by the landlord to end this tenancy. However, the parties are at liberty to find a compromise, such as having the landlord supply a new,

smaller unit, should both parties desire this and I also find that the parties are at liberty to find their own mutually agreeable solution to the matter of fixing up the exterior of the unit.

Conclusion

Based on the testimony and evidence presented by both parties during these proceedings I hereby dismiss the portion of the tenant's application relating to the request for monetary compensation with leave to reapply should the conduct continue or escalate.

I hereby order that the landlord comply with the Act in regards to the tenant's right to peaceful enjoyment of the rental unit and that the landlord cease or avoid engaging in the conduct described and condemned by both participants as inappropriate. I further order that henceforth and for the duration of this tenancy, the landlord and the tenant shall put all concerns that arise or any other communication, in written form. This order must be served on the landlord.

Finally I find that the tenant is entitled to be compensated for the cost of this application in the amount of \$100.00 and order that the tenant can reduce the rent as a one-time abatement of \$100.00 from the monthly rent.

November 4, 2008

Date of Decision