Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC
OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following:

- A Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement;
- An Order compelling the Landlord comply with the Act;

Both parties attended and gave affirmed testimony in turn.

Issue(s) to be Decided

At this hearing the issues to be determined, based on the testimony and the evidence, were:

- Whether or not the tenant has proven that the tenant suffered loss or damage due to landlord's failure to comply with the Act or tenancy agreement.
- Whether or not the tenant has proven that the landlord is in breach of the Act and should be ordered to comply with the Act or agreement.

Background and Evidence

The Tenant testified that the tenancy began in July 2006 and that since the tenancy began, the landlord has failed to ensure the quiet enjoyment to which the tenant is entitled under the Act. The tenant testified that the landlord failed to properly investigate and take action in regards to complaints of noise and harassment of the tenant by a neighbouring resident in the same complex.

The tenant testified that he has been subjected to daily disturbances consisting of another resident banging on the tenant's wall or door during the night and shouting abuses. The tenant testified that he has repeatedly reported the disturbances to the landlord and the landlord has failed to Act. In fact, according to the tenant, the landlord has persistently ignored the reports about these incidents. The tenant testified that, instead of addressing the matter properly, the landlord has inflicted reprisal actions against the tenant by contacting police, keeping records of complaints about the tenant's conduct and threatening to evict the tenant for complaining. The tenant stated that he was specifically told by a staff member in the office that he should call the emergency number to report incidents of noise. However, after following this instruction the tenant was sent a warning letter. The tenant testified that while the landlord stated that it required corroboration of his complaints, the landlord took other residents at their word regarding allegations against the tenant. The tenant testified that the fact that police found no reason to lay criminal charges against the tenant is evidence that the tenant had not threatened nor accosted another resident and serves as proof that the complaint filed against him with the landlord had no valid basis.

The landlord disputed the tenant's testimony and the accusation that the landlord had not complied with the Act in investigating the tenant's complaints over the past couple of years. The landlord testified the tenant's concerns were not ignored. The landlord referenced copies of numerous written communications from the landlord responding to the tenant's complaints, that were submitted into evidence. There was a letter dated as early as August 14, 2006 that acknowledged the tenant's complaints about noise and in

which the landlord made a commitment to follow up on the matter if necessary. The landlord testified that, despite repeatedly investigating the tenant's ongoing complaints, none of the noise allegations have ever been substantiated. The landlord testified that, specifically in regards to the report by the tenant that the neighbouring resident had pounded on his door at night, in one instance with sufficient force to damage it, no other nearby occupants in the vicinity had ever detected any hallway commotion. The landlord pointed out that, in fact, one of its staff members had resided in close proximity to the tenant, and made a point of monitoring the noise levels, being alert to any sign of disturbance, yet found no indication of significant or repeated pounding on doors or walls. The resident being accused of harassing the tenant was also interviewed more than once and has vehemently denied bothering the tenant. There is a written statement from this individual submitted into evidence.

The landlord denied that it had inflicted reprisals on the tenant. The landlord testified that there have been concerns regarding the tenant's conduct reported from several sources. The landlord testified that it received one report of an incident witnessed by several occupants of a nearby unit that the tenant had entered their suite. The landlord testified that it was the practice by the landlord to issue warning letters to tenants when a complaint warranted intervention. A recent complaint about a physical confrontation reportedly initiated by the tenant was considered to be a serious matter, particularly as the police were in attendance. The landlord stated that the police were never contacted by the landlord. Other conduct by the tenant, such as repeatedly using the emergency number to report noise complaints, also concerned the landlord to the extent that the tenant was warned in writing to cease this conduct. However, the landlord has not proceeded to the stage of issuing a Notice to End Tenancy for Cause to the applicant.

The landlord testified that, given the fact that the tenant's complaints are primarily focussed on one individual in the complex, the landlord intends to relocate this individual to another part of the building at the first opportunity. The landlord stated that this action was not based on a conclusion that this neighbouring resident was interfering

with the tenant's peaceful enjoyment, but was seen as a way of handling the conflict that appears to have escalated to a more serious level.

Analysis

In regards to the monetary claim for a rental abatement in the amount of $15,000.00, and the Applicant's right to claim damages from the other 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 any damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the 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, agreement or an order
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 contravention of

the Act, on the part of the respondent. Once that has been established, the claimant must provide evidence verifying the actual monetary amount of the loss or damage.

On the question of whether or not the landlord was in violation of the Act, I find that section 28 states that a tenant is entitled to quiet enjoyment including, but not limited to:

(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. (my emphasis)

I find that under the Act, a landlord is expected to take reasonable measures to ensure that the quiet enjoyment of a tenant is not violated. In this instance I find that the key questions to be answered are:

- Was there an “unreasonable disturbance” ?
- If so, then did the landlord meet its responsibilities under the Act to take appropriate action to rectify the problem of interference of one tenant by another?
- If not - then did this non-compliance of the Act devalue the tenancy warranting a retroactive rental abatement of $15,000.00?

In case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant would have to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord’s actions or the inaction by the landlord which permitted physical interference by an external force within the landlord’s power to control. The level must have been sufficient to render the premises unfit for occupancy for the purposes for which they were leased.

I find that the term “unreasonable disturbance” is a subjective determination that may widely vary from one individual to another.

I find that, even if a tenant hears audible noises coming from another unit in a multi-unit complex, the fact that such sounds may occur does not necessarily constitute an unreasonable disturbance. At the higher end of the spectrum, loud noises sufficient to violate municipal noise control law warranting a fine, would clearly constitute an unreasonable disturbance.

In the medium range of the spectrum, I find that noises loud enough to be heard by more than one unit within a complex would be significant enough to warrant intervention by a landlord under the Act, particularly if late at night. In regards to noises heard between two adjacent units sharing a wall that can't be detected by residents living in other nearby units, I find it would be more difficult to categorize this as "unreasonable".

On the lower end of the spectrum, for some tenants the sound of mere footsteps from above would fit the category of "unreasonable". But in an older building which may not be as soundproof as newer construction, a landlord would certainly not be required under the Act to restructure the walls or ceilings, nor would the tenant above be expected to tip-toe around their suite to avoid bothering the tenant below.

In this instance, the noise is between two adjacent units that share a wall and it consists of thumping or banging on the wall, or entry door, that evidently can only be heard by the applicant tenant and nobody else. Whether or not the tenant was able to prove that this should be considered as "unreasonable disturbance", I find that the landlord did intervene and did take reasonable action to address the tenant's complaints, including investigating, speaking to the other residents, and even being willing to move the other resident elsewhere in the complex at the earliest opportunity. I also find that there was no reprisal action on the part of the landlord. I find that, in fact, had the landlord wanted to do so, it could have gone so far as to issue a Notice to End Tenancy for Cause against the tenant, based on some of the complaints received against the applicant tenant. Yet it chose not to take that action.

The tenant's proof consisted of verbal and written statements that were refuted by the other party. It is important to note that 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 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 the damages and compensation being claimed is justified under the Act. When the evidence consists of conflicting and disputed verbal testimony in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail. I find that the tenant has not sufficiently met the claimant's burden to verify that unreasonable disturbance occurred and that it devalued the tenancy.

I find that, even if the tenant had succeeded in proving that an unreasonable disturbance did occur, I would have to find that the response of the landlord was in compliance with its responsibility under the Act in addressing the tenant's complaints to the best of its ability.

Given the above, I find no merit in the tenant's monetary claim for abatement as the claim fails to meet element 2 of the test for damages and loss. I find that, based on the testimony and evidence, the tenant's application must be dismissed.

Conclusion

Accordingly, I hereby dismiss the tenant's application in total without leave to reapply

June 2009

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Date of Decision Dispute Resolution Officer