

DECISION AND ORDERS

Dispute Codes MNDC, OLC, FF

Introduction

These hearings dealt with the Tenant's Application for Dispute Resolution, seeking orders to have the Landlord comply with the Act or tenancy agreement, a monetary award for loss of quiet enjoyment and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the Landlord breached the Act or tenancy agreement? Is the Tenant entitled to a monetary award?

Background and Evidence

This matter was dealt with over the course of two full length hearings and upon receipt of many documents and letters in evidence.

I will not recount all of the testimony and evidence in this matter, as much of it was lengthy and sometimes irrelevant. However, it has taken some time to review all the relevant evidence and testimony in this matter, and this is my determination based on those deliberations.

The Tenant has had a series of disputes with another occupant at this residential complex (I will refer to this other occupant as the "Volunteer Agent", in this Decision).

To summarize the evidence and testimony, the Tenant alleges that the Volunteer Agent has conducted a campaign to have the Tenant evicted from the subject rental unit in the residential complex.

In fact, the Volunteer Agent is not a property manager or indeed any sort of Agent for the Landlord in a capacity recognised under the legislation. The Volunteer Agent is involved in a volunteer organization which provides meal services to residents at the residential complex. It is a lunch time meal program two days a week. The Volunteer Agent and another person close to the Volunteer Agent, are also involved in another Association at the property. As such, the Volunteer Agent has contact with many of the residents in the residential complex. Nevertheless, she is not an Agent for the Landlord

in terms of managing occupation of the rental unit or exercising power or performing duties under the Act or tenancy agreement.

The Volunteer Agent was a victim of some graffiti sprayed on her rental unit door, which included some racial epithets. The Volunteer Agent accuses the Tenant of doing this. It seems that this, and some other less serious problems, has caused a great deal of turmoil at the residential complex, between factions who support the Tenant and those that support the Volunteer Agent.

Unfortunately, the turmoil has escalated over the past while, with at least one proponent of the Volunteer Agent visiting the Tenant at her rental unit. There was an instance, contrary to an interim order I made in this matter, where the Volunteer Agent had some minor limited contact with the Tenant.

The Tenant also alleges that the Volunteer Agent has spread rumours about the Tenant's testimony at an earlier Dispute Resolution Hearing under a different file number. The Tenant alleges that Volunteer Agent told other occupants in the complex that the Tenant won that earlier hearing by giving false testimony.

There were several witnesses who testified at the hearing and others who provided support in the form of letters submitted in evidence. These, of course, were largely in support of the person who solicited them, i.e., either the Tenant or the Volunteer Agent.

Analysis

Based on the foregoing, the evidence and affirmed testimony, and on a balance of probabilities, I find as follows:

I find that the Agent for the Landlord has breached the Act by failing to ensure the Tenant has reasonable privacy, freedom from unreasonable disturbance and use of common areas free from significant disturbance.

The Landlord has allowed the Volunteer Agent and others in the Association to hold themselves out as Agents for the Landlord, when in fact they should not be allowed to exercise any authority or perform any duties that are reserved in the Act for the Landlord or its bona fide Agents. It also seems probable that the Volunteer Agent has had access to discussions or information that should only have been available to the Landlord or its bona fide Agents.

While I commend the Volunteer Agent, and in fact all the volunteers at the residential property for their work, it appears the Landlord has allowed the Volunteer Agent to exert authority and influence beyond the limited scope of a volunteer position.

The Landlord should also have investigated the graffiti sprayed on the Volunteer Agent's door more thoroughly, as this instance is likely one of the root causes of many of these problems.

The Landlord must ensure that any contact with the Tenant regarding occupation and possession of the unit, and the Tenant's rights to quiet enjoyment of the unit, is dealt with by a bone fide Agent for the Landlord.

Lastly, I find that the Tenant is entitled to a monetary award in this matter for the loss of quiet enjoyment.

I find that the Tenant has established a total monetary claim of **\$351.00** comprised of \$301.00 for loss of quiet enjoyment and the \$50.00 fee paid for this application. The Tenant may deduct the sum of \$351.00 from one rent payment (which is the equivalent of one month of rent payment).

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: October 14, 2009.

Dispute Resolution Officer