



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION

Dispute codes

MNDC

Introduction

This hearing was convened in response to an application by the tenant for compensation for damage or loss under the Act, regulation or tenancy agreement for breach of tenant's right to quiet and enjoyment – Section 28 of the Residential Tenancy act (the Act). The tenant seeks compensation of up to the limit permitted by the Act – \$25,000 - as determined by the Dispute Resolution Officer.

The tenant attended the conference call hearing. The landlord did not attend. I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The applicant was given opportunity to fully participate in the hearing by prior submissions and with their affirmed testimony. The applicant was also permitted to involve witnesses and ask questions of them.

Issue(s) to be determined

Is the applicant entitled to the monetary amount claimed ?

Evidence and Background

The undisputed evidence in this matter is as follows. The tenancy began June 01, 2009 and ended August 30, 2009. The tenant gave the landlord written notice to vacate on July 30, 2009 with written reasons as to why the tenant was vacating, citing loss of quiet

enjoyment and refusal to make repairs to the property. Rent payable was \$500 per month. The tenant was the sole occupant in the rental unit.

The tenant testified as follows:

- the lawful landlord's live in partner (the landlord) is "a drunk" – described by the tenant to appear to have problems related to excessive alcohol consumptions.
- In frequency of on at least a weekly basis, the landlord, without invitation or announcement, would come into the rental unit in an apparently intoxicated state and bother the tenant and the tenant's guests.
- On one occasion the tenant did invite the landlord to a graduation "Dry party" in the rental unit for the tenant's son. The tenant advised the landlord it was a non alcohol party, to which the landlord appeared and was apparently intoxicated – "and harassed, insulted and was obnoxious and belligerent to everyone there." The tenant's son testified to this event and recounted the landlord behaving inappropriately with the guests – initiating arguments, being excessively loud and belligerent.
- On another occasion the landlord, again intoxicated came into the rental unit and engaged in insults toward the tenant's guests, including referring to the tenant's sister as a prostitute – offering to refer her to an acquaintance operating a prostitute service – and generally verbalizing inappropriate and inciting comments.
- On another occasion the landlord walked into the rental unit without invitation and engaged in "rude and obnoxious" behaviour with the tenant and guests – using profanity, sexual and racial slurs, and generally making everyone uncomfortable.
- On other occasions the landlord would show up intoxicated and his conduct would be demanding and inexplicable to the tenant – On one occasion, the tenant returned home from surgery and hospitalization and with the aid of relatives, and the landlord immediately "pounced" on the tenant over an issue with a sink, and would not stop harassing the tenant until they were physically removed.
- The tenant offered several witnesses by telephone whom the tenant stated were witnesses to the landlord's conduct while apparently intoxicated. The tenant selected several key witnesses to be called. Of the three witnesses called by the DRO, two did not respond. One witness was contacted – they recounted an

incident in which the landlord entered the rental unit while the tenant entertained guests and the witness in particular. The witness testified the landlord was “drunk” and smelled of liquor. The landlord was loud, “arrogant”, made rude comments and was generally obnoxious and abusive toward the guests. When asked to leave the landlord became physically combative and the police was called.

The tenant testified that during the first 60 days of the tenancy, he tried to appeal to the landlord on several occasions to not continue bothering him. He claims the landlord was always apologetic for his conduct, but would then return while intoxicated.

Two months into the tenancy, the tenant testified he had had enough and on July 30, 2009 the tenant gave the landlord their Notice to Vacate, as soon as possible, citing the landlord’s conduct as the reason for the Notice to end the tenancy. The tenant provided a copy of the Notice to end. The following day the landlord is said to have given the tenant a One Month Notice to End for Cause, with the reasons of interference with the landlord, disturbance, and placing property at risk, tenant damage and adversely affecting the quiet enjoyment of another occupant or the landlord. The tenant provided the original of the landlord’s Notice to End, which was posted on the tenant’s door.

The tenant testified he moved at a cost of approximately \$500, which he paid in cash to several friends over several instalments, and further had to relocate into more costly premises. The tenant did not provide receipts or other substantiating evidence as to moving costs or their new rent.

Analysis

The Act states as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (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.

On reflection, I accept the tenant's undisputed testimony as forthright, given with conviction, and generally credible. On the preponderance of all the evidence before me and on the balance of probability I find the tenant's entitlement to quiet enjoyment as prescribed by Section 28 of the Act was breached by the landlord – the tenant attempted to mitigate the breach but the landlord persisted in conduct in breach of the Act, and the tenant was compelled to vacate at a cost to the tenant.

Despite the lack of document evidence I find the tenant is entitled to compensation for the cost of moving, and I accept the tenant's claim that he paid up to \$500 for moving costs. As a result, I grant the tenant **\$500** in this regard. I also find the seriousness and length of the landlord's breach entitles the tenant to compensation as affirmation of the infraction of the tenant's legal right in this matter. I find that compensation in the amount of one month's rent - **\$500**, aptly speaks to the severity of this claim.

Conclusion

The tenant is being given a Monetary Order under section 67 of the Act in the amount of **\$1000**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated November 19, 2009.