

DECISION

Introduction

This hearing was re-convened pursuant to adjournment of proceedings commenced on May 27, 2010 for which an Interim Decision and Order was rendered on May 31, 2010.

On May 28, 2010 the tenant determined to file an additional application to cancel a notice to end tenancy for cause dated April 07, 2010 along with a mirror application to the adjourned matter in respect to compensation for loss of quiet enjoyment.

The relevant matter before this hearing is the tenant's monetary claim under the Act, regulation or tenancy agreement for loss of quiet enjoyment, which the tenant describes as harassment by the landlord, beginning in 1999.

As a result of the hearing of May 27, 2010, an Order of Possession was granted in favour of the landlord - ending the tenancy June 30, 2010. The tenancy has been Ordered at an end. The tenant's application disputing another Notice to End is moot and hereby dismissed.

Preliminary matters

The tenant requested additional reasons for the interim decision and was referred to the decision.

The hearing proceeded on the merits of tenant's residual application. The applicant bears the burden of proving their claim for compensation.

Issue(s) to be Decided

Has the landlord sufficiently interfered with the tenant's right to quiet enjoyment?
Is the tenant entitled to the monetary amount claimed for loss of quiet enjoyment?
Has the landlord engaged in harassment of the tenant?

Background and Evidence

The tenant testified they suffer from a number of medical conditions. They also testified that they consider themselves a good tenant.

The tenant claims a loss of quiet enjoyment inclusive of long-standing harassment from the landlord, for over 10 years. The tenant testified, generally, of incidents dating back to 1999. The tenant defined loss of quiet enjoyment and harassment stemming from incidents of *[from interim decision]*:

- “unnecessary intrusions”,
- “accusations” of not reporting income,
- unreasonable demands of the tenant - “things tenant has been asked to do or made to do”, or, “been asked to pay for”.

The tenant withdrew a previous allegation of verbal altercations respecting the tenant's sexuality.

Re: “Constant intrusions” [from interim decision]:

- the tenant testified the landlord has required / demanded inspections of the rental unit 2 times per month since the fall of 2009, and that the landlord has taken photographs of the rental unit – of which some are irrelevant to the landlord's purposes and are an intrusion of the tenant's privacy. After inspections, the tenant has been told by the landlord to clean certain areas or attend to certain housekeeping tasks, which the tenant finds unnecessary or invasive.
- The landlord argued that periodic inspections are required for due diligence purposes in respect to the condition of the units and the building and that, in the case of the tenant there has been 4 inspections conducted of the suite in the past 10 months. The landlord testified that the taking of photographs are for administrative reasons and as a record for maintenance purposes, and have been and are disclosed as a condition of the tenancy. The landlord provided supporting evidence in this regard. The landlord testified they apply the same scrutiny to all rental units of the complex as there are many inter-related issues and potential problems in the complex that require constant management, such as pest control and infrastructure and envelope related issues. The landlord and tenant provided differing testimony in relation to pest control matters. The tenant testified the landlord accused them of poor housekeeping practices and improperly demanded improvement from the tenant. One of the landlord's examples was that they seek the services of pest control contractors, and that on at least one occasion, the landlord's request of tenants, and of the applicant, was for them to enhance their house-keeping practices in order to stem and avoid problems with recurring pests.

The tenant testified in today's' hearing about, what they allege are, all too frequent unit inspections or unit assessments, and pest control inspections, with allegedly ulterior motives to find cause for eviction. The tenant alleges that the pest control contractors are working in concert with the landlord to intrude on her privacy and investigate the tenant's housekeeping – which they report back to the landlord – and designed to fulfill the landlord's agenda to find cause for eviction. The tenant claims the landlord employs a conditions list which includes categories for cleaning, vacuuming, repairs to be done, etc. The tenant thinks this list is unreasonable and is seemingly never satisfied and gives the landlord permission to continually review her housekeeping. The tenant states that the

landlord had asked for access to her unit on average twice per month since November 2009, therefore filed a lawsuit in the courts and in March 2010 the tenant has denied the landlord access to the rental unit by the landlord or the pest control contractors.

The tenant also complained of the landlord's need over the years of occasional access to a portion of the roof for inspection or repairs, which can only be accessed via the tenant's rental unit which the tenant claims is the result of 'poor design' - and that this access intrude on her privacy, and are used to harass the tenant.

The tenant also testified that the entire residential complex is equipped with "loudspeakers" in all the suites which are occasionally used to make trivial announcements and are intrusive. The landlord explained that all units are equipped with a 'life support system' incorporating an intercom feature (vs. a loudspeaker) which is designed to be of a benefit to tenants, and when seldom used it is to make timely announcements to all tenant's - and it has not been an issue. The tenant claims it is used about 3 times per year and she does not consider it welcome.

Re: 'Accusations' - income verification, rent [from interim decision]:

- The tenant testified of constant requests for income verification and threats of eviction for non-compliance.
- The landlord testified that income verification is required to calculate rent payable - annually, and on a self-reporting basis throughout the year, as circumstances may dictate - which may require a tenant to provide income verification on a more frequent basis. Landlord testified this is a strict requirement for subsidization of rent, and has been clearly spelled out and is a requirement of the tenancy. The landlord testified that in the tenant's case the tenant has continually avoided their duty to provide verification of income.

The tenant further testified that in February and April of 2009 the landlord's representatives of JG and RN responded to the tenant with verbal threats of eviction for non-compliance with verification of income. The landlord denied making any threats of eviction.

Re: Unreasonable demands of the tenant - "things tenant has been asked to do or made to do", or, "been asked to pay for".

The tenant determined that a particular individual of the landlord (JG) "exploited" some of the tenant's personal fears starting in 1999. The tenant recounted an episode in 1999 in which JG kept a set of chairs from the tenant, which the tenant describes as being withheld from them, for 6 months and then demanded a nominal "storage fee" from the tenant for their release. The tenant thinks this was completely inappropriate and the beginning of other unreasonable demands to come over the next 10 years. The tenant submitted that JG has told her that she does not belong in the building which the landlord has denied.

The tenant has also submitted several pieces of correspondence from 3rd parties dated in 2002, which allude to assertions of harassment by the tenant from JG. The tenant claims that JG has ignored recommendations of 3rd parties of the time to leave the tenant alone.

In addition:

- The tenant claims that in 2005 the landlord (JG) told the tenant that treatment for 'bed bugs' found in the tenant's suite were the responsibility of the tenant, for which the tenant was asked to pay \$300 for 3 pest control treatments; and, that this resulted in subsequent inspections of the suite for bed bugs and other pests. The tenant later learned the landlord is responsible for pest control and the landlord also adjusted their approach to this subject.
- In 2005 the tenant hit the garage door causing minor damage, for which the landlord demanded a sum of money for its repair. The tenant determined the landlord should have gone through ICBC, so did not pay and regarded the demand from the landlord as harassment.
- In September 2009 the tenant broke off a fire suppression sprinkler-head on her balcony while cleaning the area with a mop. Water poured out, fire alarms went off, the Fire Department responded, water to the fire system was shut off, a contracted technician was called and a 24 hour fire watch by personnel was instituted by the fire Department until repairs could be conducted by a technician. The landlord subsequently charged the tenant for the damage they caused including inside wall access and repairs, minus the staff time to perform the 24 hr. fire watch. The tenant produced the technician's invoice, photographs and rationale from the landlord for the repairs. The tenant testified they think the landlord's demand for money in this respect was unreasonable and improper given the tenant could not afford it and that the landlord has staff on salary to carry out repairs, and insurance. The tenant regards the landlord's subsequent insistence of full payment for the repairs as harassment, but was agreeable to pay a total of \$115 for parts.
- The tenant also submitted invoices from the landlord for furniture moving / dumping costs of \$85 to dispose of the tenant's furniture. The tenant disputes the cost.
- The tenant also testified of an issue with her 80 square foot balcony deck. The tenant claims the landlord is unreasonably dissatisfied about its condition and has made demands of the tenant to keep it tidy or to clean its surface of apparent algae growth. The tenant thinks this demand is excessive and designed to harass and create stress for the tenant. The landlord states that the tenant's area is the responsibility of the tenant, not their maintenance people, and claims due diligence

for a myriad of reasons including for safe access to the roof and for maintenance and risk reduction.

The tenant provided 10 letters of support from 9 individuals, including her medical and mental health professionals, as well as friends, her daughter, and her counsel. The letters comment on the tenant's character and accounts of the tenant that she has been, or feels she has been "harassed" by the landlord, namely JG. Many of these letters comment about the apparent emotional toll that the tenancy relationship, and JG, has had on the tenant since the later part of 2009 and especially since the tenant filed a law suit for harassment in the courts against the landlord.

Analysis

On review of the evidence from both parties, it is clear that over many years the tenant and landlord developed, and have never overcome an acrimonious relationship, and the tenant clearly directs considerable animosity toward the landlord. As a result, the tenant has clearly experienced the emotional discomfort associated with the spiral of disagreement and conflict the tenant is claiming. The tenant states that despite having been a model tenant, the landlord has engaged in conduct(s) which has interfered with her right to quiet enjoyment and engaged in a campaign of harassment.

The landlord has responded with a quantum of document evidence purporting to a practice of 'due diligence' in respect to the tenancy, and with document and testimonial evidence purporting to a course of 'business as usual' in pursuing their right and responsibility to maintain the residential property and in this course holding tenants accountable for their conduct and reminding them of their responsibilities as tenants.

It is important to note the following:

- the covenant of quiet enjoyment protects the tenant's right to freedom from *serious or significant* interference with their tenancy.
- The Residential Tenancy Act (section 28) establishes rights to quiet enjoyment which includes, but not limited to;

Reasonable privacy

Freedom from *unreasonable* disturbance, and

Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29

- Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

- “Harassment” has a number of definitions – all of which reflect an element of ongoing or repeated activity by the *harasser* which is known or ought reasonably to be known to be unwelcome by the recipient. The Dictionary of Canadian Law adds the element of *vexation* – “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.

On preponderance of the evidence and on the balance of probabilities, while I accept that the tenant has experienced episodes of feeling persecuted by some of the demands of the landlord, I find that the tenant has not met their burden of proving the landlord wilfully and knowingly engaged in conduct to annoy or disturb her or intentionally inflict mental suffering. After hearing the evidence of the parties I am satisfied that many of the complaints raised by the tenant are not the basis of a claim for harassment or breach of the covenant of quiet enjoyment. For example, the tenant acknowledges causing damage to the rental unit when she broke the fire system sprinkler and consequently the resulting damage generated costs for the landlord. The tenant strongly disputes those costs are her responsibility and determined to dispute the landlord’s request for payment – when the Act is clear that a tenant is responsible to repair damage to the rental unit or common areas that is caused by the actions of the tenant or a person permitted on the residential property by the tenant. The tenant testified she takes issue with the fact that the landlord requested her to pay for the repairs repeatedly and that these repeated demands are harassment. I do not accept this as a sufficient basis of harassment. I do not find in the tenant’s evidence a “campaign” or course of conduct by the landlord to harass or otherwise disturb the tenant. Rather, on the face of the evidence the landlord may well be accused of over-diligence in their methods to maintain the residential property (and this rental unit) free of problems. I dismiss the tenants claim for compensation for loss of quiet enjoyment on the basis of harassment by the landlord.

I do not have benefit of knowing the global responsibilities that the residential complex presents to the landlord; however, I find that the pace of the landlord’s demands for access to the tenant’s suite for roof inspections or roof access and regular assessments of the tenant’s suite for pests, and assessments of the suite’s condition for maintenance issues have, on the balance of probabilities, been such that altogether they have weighed on the tenant’s right to freedom from disturbance. In the matter of this tenancy I find that some of the landlord’s demands of entry for inspections might have been prevented, or otherwise mitigated given the landlord’s knowledge of the resulting stress it might place on this particular tenant. None the less, despite the landlord’s approach to their responsibilities, I find the landlord’s course of inspections is within their right as afforded by section 29 of the Act which states as follows;

Landlord’s right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

However, while the landlord may be within their right to regularly inspect the rental unit basis subject to Section 29 of the Act, the tenant remains entitled to the established covenant to quiet enjoyment. I find the landlord's method of recording their routine inspections of the tenant's suite by way of photographs, although of convenience for the landlord, caused unnecessary angst and discomfort to the tenant. I am not satisfied that this practice by the landlord is altogether appropriate monitoring of the tenant's suite. I find it breaches the tenant's right to *reasonable privacy*, entitling the tenant to nominal damages of **\$250** for loss of quiet enjoyment.

Conclusion

I have allowed the tenant's claim for loss of quiet enjoyment and awarded compensation, without leave to reapply.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$250**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.