



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement; authorization to reduce rent; and, recovery of the filing fee. The landlord was represented by a property manager and the owner of the property.

I heard the tenant served the property manager with hearing documents and the property manager provided a copy of the tenant's documents to the owner. The Act and Rules of Procedure require that each respondent be served by the applicant; however, the owner confirmed receiving the tenant's documents and had prepared a written response. Therefore, I deemed the documents sufficiently served upon the owner in accordance with the authority afforded me under section 71 of the Act.

Issues(s) to be Decided

1. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement and if so, the amount?
2. Is it necessary to issue orders to the landlord for compliance with the Act, regulations or tenancy agreement?
3. Has the tenant established an entitlement to a rent reduction?

Background and Evidence

I heard undisputed testimony as follows. When the tenancy commenced in August 2007 the tenant was required to pay rent of \$1,280.00 per month. The rent was increased to \$1,320.00 per month starting January 2009. The rental unit is a two bedroom, one bathroom 1950's duplex with a partially finished basement. The other side of the duplex is occupied by the owner's brother, sister-in-law and nephew (herein referred to as the family members). The owner's family members have been residing at the residential property for over 25 years. Both sides of the duplex are managed by the property manager named in this application.

It was also undisputed that in January 2010 the tenant complained to the property manager in writing about the disturbing behaviour taking place in the adjacent unit. The tenant complained about the disturbing behaviour to the property manager in writing again on April 12, 2010. On April 15, 2010 the property manager issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the owner's family members with an effective vacancy date of May 31, 2010. On May 27, 2010 the tenant complained to the property manager again in writing about the disturbances in the adjacent unit. The Notice was not enforced and the family members continue to reside in the adjacent unit. In response the tenant filed this Application for Dispute Resolution.

The tenant provided the following testimony. The tenant described the disturbances next door as alcohol fuelled fighting, yelling and domestic violence with the owner's sister-in-law as the primary victim. The tenant described how disturbances had occurred since her tenancy began and that she verbally communicated with the owner about the disturbances. In April 2009 the domestic violence escalated to the point where the tenant took the owner's sister-in-law away from the property for her own safety. Since April 2009 the tenant began journaling the disturbances and reporting the disturbances to the property manager. The tenant stated that she has called the police on four occasions when the disturbances were warranted police attendance and the police have been at the adjacent units at other times. The tenant stated that the police

are familiar with the situation in the adjacent unit and the tenant has now been provided the direct phone number of a special domestic violence police officer.

The tenant submitted that she felt misled when she rented the unit in that she was seeking a quiet and safe unit to raise her young son. The tenant submitted that her son has been affected by the violence taking place next door as the violence and foul language can be heard through the walls. After the Notice was issued to the family members the disturbances diminished; however, there had been two recent incidents. The tenant attributes most of the recent disturbing behaviour to the owner's adult nephew. The tenant claims that the property manager informed her that the Notice would not be enforced as the owner would not evict his family members.

By way of this application, the tenant is seeking to obtain an order that the nephew be required to vacate the residential property and a rent reduction of \$420.00 per month from January 2010 onwards to reflect the diminished value of the tenancy.

The property manager testified as follows. The rent has been kept low or below market to recognize the "problems" originating from the adjacent unit. The property manager was asked to elaborate on the "problems" to which he was referring. The property manager responded hesitantly that he was unsure as to what extent the problems were but that he was aware of as yelling and use of foul language. The property manager estimated that the market rent for the rental unit is currently \$1,500.00 - \$1,600.00 per month. The property manager stated that the tenant called him approximately once every few months to complain about disturbances in the adjacent unit and then only two written complaints were received prior to issuing the Notice to the family members. The property manager pointed to a lack of complaints from neighbours and that the disturbance to the tenant is only noise. The property manager submitted that he did not enforce the Notice as he was of the opinion that there was not enough evidence to obtain an Order of Possession from the Residential Tenancy Branch.

The owner testified as follows. The owner and tenant had discussions about disturbing behaviour taking place in the adjacent unit and the owner instructed the tenant to document it and report it to the property manager. Rent was set at a low rate to attract a good tenant but not in recognition of problems in the adjacent unit. The owner made a written submission that this application has been made because the tenant is being vindictive and because of a “personality conflict” with his family members.

Both the property manager and owner were of the opinion this situation requires monitoring and if further disturbances take place the family members will be issued the appropriate warning.

The tenant refuted the property manager’s and owner’s claims that rent is unreasonably low when utilities are taken into account.

Provided as evidence for the hearing is a copy of the tenancy agreement, the tenant’s ledger account showing rent payments, photographs of the property, the owner’s written submission, pages from the tenant’s journal, the written complaints made to the property manager and the Notice issued to the family members.

Analysis

Section 28 of the Act protects a tenant’s right to quiet enjoyment, which includes freedom from unreasonable disturbance in the rental unit and use of common areas free from significant interference.

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* (the policy guideline) provides a statement of the policy intent of the legislation that deals with a tenant’s right to quiet enjoyment. The policy guideline is intended to assist in understanding issues that are likely to be relevant to the matter.

The policy guideline provides that a breach of the covenant of quiet enjoyment may be found where a tenant shows that the landlord has sat idly by while others engage in activity that unreasonably interferes with the tenant's quiet enjoyment. Interference includes unreasonable and ongoing noise; however, temporary discomfort or inconvenience does not constitute a basis for a breach of quiet enjoyment. The policy guideline also provides that

“a landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.”

Where there has been a violation of the Act by one party, the other party may be entitled to an award for compensation. Since awards are intended to be restorative, compensation to a tenant who has suffered a loss of quiet enjoyment would approximate the devaluation of the tenancy. The policy guideline provides that the seriousness of the situation, the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed should be taken into consideration.

Although the property manager referred to the disturbance to the tenant as only noise I find that statement understates the degree of seriousness and level of disturbance to those who hear frequent fighting and domestic violence. For example, many sounds of noise may be viewed as annoying, such as playing loud music, but the sounds of domestic violence are more likely to reflect violent, illegal and threatening behaviour that are especially disturbing to most people. Therefore, I find the sounds of domestic violence to be the sort of activity that is a substantial interference with a tenant's ability to quietly enjoy their rental unit.

Upon hearing from both the property manager and the owner I find that their positions were inconsistent. For instance, the property manager stated rent was kept low to reflect the “problems” going on in the adjacent unit which would indicate to me that the landlord was aware of “problems” from the onset of the tenancy. Yet, when I enquired about the types of problems to which the property manager referred I found the property manager hesitant and vague. The owner stated rent was set lower than market to attract a quality tenant and submitted in writing that the tenant’s dispute is in relation to a “personality conflict”.

In contrast I found the tenant’s submissions and responses were clear, specific, unambiguous and largely supported by her journaling and written complaints to the property manager. Therefore, I accept the tenant’s version of events as an accurate reflection of the activities that have been experienced at the residential property and find that the activities constitute domestic violence and are much more serious than a personality conflict.

With respect to the issuance of the 1 Month Notice, I found the property manager’s testimony unlikely and presumptuous. I find it unusual that a professional property manager would use a Notice to End Tenancy as a way of warning a tenant since Notices to End Tenancy are legal documents that have significant implications. Rather, a professional property manager usually issues warning letters to warn tenants of their offending behaviour. I accept that the tenant had a reasonable expectation that the Notice would be enforced as it does not make sense that the property manager would inform the tenant he had issued a Notice to End Tenancy if it were intended to be a warning only. Further, the property manager took the position that an Order of Possession would not have been granted had he applied for one, yet he took this position without any indication that he made an attempt to gather sufficient evidence from the tenant, neighbours or the police to support such an application for an Order of Possession. Therefore, based on the balance of probabilities, I accept the tenant’s

version of events that the property manager had informed the tenant that the owner had precluded the property manager from enforcing the Notice.

Clearly action needs to be taken to protect the tenant's right to quiet enjoyment and I find the owner and property manager have taken insufficient action to date. I cannot grant the tenant's request to require the owner's nephew to vacate the adjacent unit as an Order of Possession may only be granted to a landlord upon application and the landlord has made no such application with respect to the adjacent unit. However, I will grant the tenant's request for compensation and a rent reduction to remain in place until such time the owner's nephew vacates the adjacent rental unit.

I do not find the landlords satisfied me that the rent payable by the tenant is unreasonably low. Even if the rent is low, the owner explained it reflects that the tenant is a quality tenant. Accordingly, the current rent payable by the tenant does not reflect the fact that the tenant's quiet enjoyment is diminished by the owner's family member's actions. I find the tenant's request for a rent reduction of \$420.00 is reasonable considering the seriousness of the situation and my determination that the owner and property manager have been very aware of the disturbances coming from the adjacent unit yet refuse to take or have been remiss in taking sufficient action to remedy the situation. Therefore, I award the tenant compensation equivalent to \$420.00 per month.

I find the tenant entitled to compensation starting May 2010 as I find this is the month that the owner interfered with the enforcement of the Notice and in essence disregarded the tenant's right to quiet enjoyment.

In light of the above, I award the tenant compensation of \$1,680.00 for the months of May, June, July and August 2010 and I award the filing fee to the tenant. I provide the tenant with a Monetary Order in the total amount of \$1,730.00 to serve upon the landlords. The monetary award may be satisfied by withholding rent otherwise payable

and if the tenancy ends before the award is fully satisfied, the tenant may enforce the balance in Provincial Court (Small Claims).

I also reduce the monthly rent payable to \$900.00 starting September 1, 2010 and I order that the rent will remain at this amount until such time the owner's nephew ceases to reside in the adjacent unit.

Conclusion

The tenant was successful in establishing that the tenant's right to quiet enjoyment has been violated due to actions of other tenants and the landlord's insufficient response to the situation. The tenant has been awarded \$1,730.00 which may be recovered by withholding rent otherwise payable or by enforcing the Monetary Order in Provincial Court (Small Claims). The tenant has also been authorized to reduce monthly rent payable to \$900.00 per month starting September 1, 2010 and the rent will remain at this amount until such time the owner's nephew ceases to reside in the adjacent rental unit.

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: August 20, 2010.

Dispute Resolution Officer