

## **DECISION**

### **Dispute Codes:**

MNDC, OLC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for an order that the landlord comply with the Act and agreement, and monetary compensation for loss of peaceful enjoyment of the suite or devalued tenancy.

Despite being served by registered mail sent on March 3, 2011, the landlord did not appear and the hearing proceeded in the landlord's absence.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss and whether an order to compel the landlord to follow the Act is warranted.

The burden of proof is on the applicant/tenant to prove all of the claims and requests contained in the tenant's application.

### **Background and Evidence**

The tenancy began in 1993 and the current rent is \$515.00. A security deposit of \$247.50 is being held in trust by the landlord. The tenant testified that, over a long period of time, the tenancy has been plagued by interference from clients of the commercial establishment located on the main floor of the building. The tenant testified that there were parking issues that had since been resolved and incidents of vandalism that were reported to the police.

The tenant has also had ongoing problems with one other resident occupying one of the five other rentals unit in the complex, resulting in a loss of quiet enjoyment. The tenant described incidents in which this individual repeatedly pounded on the tenant's door until the police intervened and warned the resident to desist. The tenant stated that he had made the landlord aware of this objectionable conduct. However, because the landlord has not responded directly to the tenant in regard to his complaint, there is no way to know whether or not the landlord ever issued a warning letter to the offending

resident. The tenant testified that a further, more serious, incident was engineered by the resident. Evidently, a call was made by this individual to emergency services, (911) falsely reporting that the tenant was injured and could be heard desperately pounding on the wall for help. The tenant was awakened by the resulting chaos when paramedics attended to assist. The tenant stated that he reported this harassment to the landlord and the tenant referred to a letter in evidence dated November 2, 2010. In this correspondence, the tenant puts the landlord on notice that he expects the landlord to comply with the Act by protecting his quiet enjoyment. The tenant did not receive any reply and stated that he has no way of knowing whether or not the landlord took any action whatsoever. However, there has been no recurrence of the unreasonable disturbance. The tenant speculated that this may merely be due to the fact that the offending individual has now been hospitalized.

Based on the above, the tenant was seeking monetary compensation and an order that the landlord comply with the Act.

### **Analysis**

With respect to the monetary claim, section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence 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 or agreement
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 tenant to prove a violation of the Act or agreement and a corresponding loss.

I find that the landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable in a building shared with a commercial tenant located on the ground floor serving clients at large. I find that, through a situation that was not necessarily caused by the landlord nor under the control of the landlord, the tenant's quiet enjoyment has been compromised on occasion because of the activities of the patrons of the commercial tenant. I find that, due to the existing environment where the residential unit is situated, there should be an expectation that tenants will need to tolerate or deal with inconvenience and possibly annoying conduct of the patrons, including parking, noise or public vandalism. I find that these issues do not result from any particular violation of the Act or the agreement by the landlord.

However, with respect to the conduct of disruptive renters in the complex who violate the Act by unreasonably disturbing or significantly interfering with the quiet enjoyment of neighbouring occupants, I find that, once reported to the landlord, there is an obligation under the Act that the landlord take reasonable steps to protect the quiet enjoyment of other tenants.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that 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.  
(my emphasis)

Section 47 (1) of the Act permits a landlord to issue a One-Month Notice to End Tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

I accept the tenant's evidence that this other resident did engage in the conduct being alleged. As the landlord did not attend this hearing to give testimony, it is not clear what action, if any, the landlord has taken. However, I find that, since the letter of November 2, 2010 was sent to the landlord by the tenant, there have been no further incidents.

Accordingly, I am not prepared to issue an order that the landlord comply with the Act nor monetary compensation for the tenant, at this time. That being said, the tenant is at liberty to make another application, should the same problem resurface again and no remedial action is taken by the landlord.

**Conclusion**

Based on the testimony and evidence discussed above, I hereby decline to order the landlord to comply and I also decline to issue a monetary order for loss of quiet enjoyment . The tenant's application is dismissed with leave to reapply if necessary.

I find that the tenant is entitled to be reimbursed for the cost of filing this application and hereby grant a monetary order in favour of the tenant for \$50.00. This order must be served on the landlord and may be enforced in Small Claims Court if necessary.

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: March 2011.

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Residential Tenancy Branch