



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to compel the landlord to comply with the Act.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn. Both parties had witnesses appear.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to an order to force the landlord to comply with the Act.

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

Background and Evidence

The tenancy began in June 2009 and current rent is \$345.00. The tenant testified that he had been subjected to ongoing harassment from another resident and excess noise from power tools being used in a semi-enclosed area in the complex. The tenant's position is that the landlord has refused to take appropriate action to protect the tenant's right to quiet enjoyment.

Submitted into evidence were written statements from the tenant and the landlord and copies of letters and communications.

The tenant testified that another resident in the complex has continually goaded and harassed him. The tenant stated that this individual has a documented history of bothering others but that the affected residents are not willing to lodge a complaint about his conduct for fear of reprisal. The tenant stated that the individual in question has targeted him and makes it a practice to accost him anytime he leaves his residence, and makes hostile and insulting comments without any provocation. According to the

tenant, the resident uses foul language, makes threatening gestures, gets “in his face” and acts in an aggressive manner.

The tenant acknowledged that he too has occasionally resorted to yelling and swearing back at this individual, because he felt pushed into a position of being forced to defend himself. The tenant stated that the resident usually confronts him when there are no other witnesses and the few times when there were witnesses, they have refused to get involved or report the conduct. The tenant stated that he has been upset by the resident swerving his car towards him when he is walking along the side of the roadway and the tenant believes that he is at risk of bodily harm.

The tenant's witness, who is a professional care-giver working with the tenant, testified that on several occasions when she came to visit the tenant to provide assistance, the conduct of the resident in question also made her uncomfortable and caused her to fear for her own personal safety. This unprovoked conduct included hostile glaring, threatening body language, intimidating gestures, banging on the inside of the window to get her attention and, on one occasion, physically blocking her access with his car. The witness testified that the behaviour was sufficiently unnerving for her that she found it necessary since then to go out of her way to avoid having to pass by his suite.

The tenant's advocate testified that when he became aware of the fact that this individual was bothering the tenant, he made the landlord aware of the problem on the tenant's behalf. The advocate stated that the landlord was apparently not willing to do anything about the conduct of this aggressive resident, so the advocate had a conversation directly with the resident and left the meeting with the expectation that the problem was resolved. However, after a brief respite, the annoying behavior by the other resident towards the tenant evidently resumed.

The tenant's position is that the landlord has incorrectly categorized this as a simple conflict between two people without properly investigating the problem. The tenant pointed out that the landlord is fully familiar with this person's history of aggressive conduct, but still refuses to intervene to protect the tenant's right to quiet enjoyment and his safety.

The landlord testified that complaints have come in from other residents about foul language and raised voices from both the tenant and the other resident having heated exchanges with one another. Two witnesses supported this allegation and testified that in the past they had observed the tenant and the resident hollering and arguing with one another. The landlord testified that each of these men have separately complained about the conduct of the other and each one has vowed that he “*will not back down*”. The landlord stated that, despite the ongoing problems, it is not prepared to terminate the tenancy of either tenant at this point. According to the landlord, and the landlord's

witness, if other residents were asked who was the instigator, it is likely that half would side with the tenant and the half would side with the his adversary. The landlord stated that they did take action by issuing warnings to the other resident and attempted to defuse the conflict by offering the tenant another unit farther away from this other resident. The landlord testified that the tenant refused to relocate. The alternate unit is now no longer available.

The tenant also took issue with ongoing noise from a make-shift workshop set up in an area of the complex. The tenant stated that the noise is amplified by the fact that the area is not fully enclosed and testified that the frequent use of power tools has interfered with conversations and quiet enjoyment of his suite. Witnesses for the tenant supported this testimony.

The landlord stated that the use of power tools is only occasional and the location of the work area is not as close to the tenant as it is to the business office and yet the landlord and other residents located closer to this site have not found the noise to be bothersome at all. The landlord testified that the “shop” area is primarily used for maintenance work, but is available to residents who want to borrow the space to do personal projects. The landlord stated that any time a complaint is made, the work-shop activity was ceased.

Analysis

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.

Section 47 of the Act permits a landlord to terminate a tenancy by issuing a One-Month Notice to Notice to End Tenancy for Cause in cases where a tenant or a person permitted on the residential property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

In situations that involve two tenants, I find that the expectation is that the landlord will conduct a thorough investigation to determine whether one or the other or both are engaged in conduct that violates the Act or Agreement and proceed to take further action depending on the results.

In this instance I find that the landlord did not ignore the tenant's complaints and intervened to a degree trying to find a solution. I find that the landlord's intention to monitor the situation further is a positive step. I also find that the plan of getting a written commitment from each of the two men, both the applicant tenant and the other resident is a measure that would satisfy the landlord's responsibilities under the Act at this juncture. The commitment would include the following parameters:

- not to communicate directly with one other in any form,
- avoid being in the proximity of one another whenever possible
- refrain from interference with one another and their guests

A mediated discussion ensued and it was determined that the tenant's concerns would be looked into further by the landlord with the participation and assistance of the tenant's advocates.

Given the above, I find that the parties have reached a potential resolution which could resolve this matter for the time being, failing which either party is at liberty to make a future application for dispute resolution with regard to this or any other tenancy matter.

Conclusion

In consideration of the tentative measures towards a possible solution, I dismiss the tenant's application with leave to reapply.

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: April 2011.

Residential Tenancy Branch