



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and an Order for the landlord to comply with the *Act*.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on June 28, 2011.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

Both parties agree that this month to month tenancy started in July, 2009. At this time the tenant pays a monthly rent of \$352.94 on the first day of each month.

The tenant testifies that he has experienced harassment from another tenant for two years. He states he has had to call the police twice and has sought help from the landlord to deal with the other tenant appropriately but the landlord has failed to do what is required to stop this harassment.

The tenant testifies this other tenant has thrown the tenant's past criminal history at him, he continually says negative things to the tenant and about the tenant, and he is aggressive and has turned some other tenants in the complex against him. The tenant states it appears as if the landlords are siding with him as he appears to be unafraid of any reprisals for his behaviour. The tenant states he has experienced lewd, vulgar and slanderous comments and actions and accusations of him sleeping with other tenants. The tenant states this other tenant (HM) tries to provoke him and taunts him in what he believes is an attempt to build a case against him with the landlord. He states HM drives past his apartment, honks his horn and makes rude faces or gestures at him. The tenant states he tries to ignore him but this just seems to increase the taunts as no one holds HM accountable for his behaviours.

The tenant testifies that a previous hearing was held on April 01, 2011 concerning this matter and it was agreed that a mediated meeting should be held between the two tenants and the landlord to get a written commitment from both tenants to have no contact with the other. The tenant states he was given leave to reapply at this hearing and has provided documentary evidence pertaining to this. The tenant testifies that the landlord has not followed through with by getting a written commitment from the tenants. The tenant testifies that the landlord's solution to this problem would be to move him to another unit in another section of the complex. The tenant states he does not want to leave his home and the friends he has made there and feels even if he does move the other tenant will continue to harass him.

The tenant testifies that there is a work shop under his unit for other tenants to use. He states when he moved in to the complex he was told this room was a storage area. He states only two tenants seem to use this shop and he has been continually disturbed by power tools being used there. He states the work shop is a small area and people have to use the power tools outside the shop right under his unit. He states the noise is so loud on

occasion that he cannot hear his television, engage in conversation or speak on the telephone. The tenant seeks compensation from the landlord for not complying with the *Act* and protecting his right to quiet enjoyment of his rental unit on both these counts

The landlord testifies that meetings were held after the last hearing on May 24 and June 14, 2011. The landlord has provided the minutes of these meetings in evidence. The landlord states the tenant was offered a different unit in the complex but he rejected this offer. They also considered moving the other tenant but as he has parking and a garden this was not feasible and would not resolve the issue with the workshop. (HM rejected this offer in the hearing). The landlord testifies the tenant was asked in the meeting what it would take to resolve this problem and the tenants' representative indicated that the only resolution acceptable to the tenant is to evict HM to fire the member of the board and her husband and to reprimand another tenant with whom he was experiencing conflict

The landlord testifies that the tenant has not proposed a reasonable solution to the problems he is experiencing. If he had agreed to move units he would be away from HM and the noise from the workshop. The landlords testify that the workshop is an important amenity to the other residents in the complex and has been in use for many years prior to the tenants' arrival at the complex. They state the tenants that use this facility do so infrequently and on only one occasion was it in use for an extended period of time of two weeks while one of the other tenants sanded down the benches for the complex.

The tenant disputes the validity of the minutes He states the minutes do not show that he was present, the notes are inaccurate and he never said anyone should be fired or evicted. The tenant testifies at the meeting he gave examples of the harassment and told him another tenant who was also being harassed was moving out because of it. The tenant states he has provide a document signed by eight other tenants attesting to the tenant being an asset to the complex.

During the course of the hearing it was proposed that an agreement could be reached between the parties by putting together a no contact order and having both tenants agree to

this. HM was asked to enter the hearing at this point to agree or disagree with the terms of the agreement documented. Both tenants verbally agreed to comply with these terms.

The tenants and landlords all agree to the following terms and understand if either tenant breaks this agreement the landlord is entitled to take further action against that tenant by issuing them with a One Month Notice to End Tenancy:

- The tenants agree they will have no further contact either physical, verbal or written.
- The tenant agree they will not display any antagonistic behaviour towards the other tenant or their guests including making any defamatory remarks or gestures
- The tenants agree to avoid being in close proximity to the other tenant or guests or interfere with the other tenants quiet enjoyment of their rental unit or common areas.
- The landlords agree to fully investigate any written complaints made to them.
- The landlords agree to take any necessary action against either tenant if they fail to comply with this agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. An agreement has been reached between the tenants and the landlords concerning the section of the tenants' claim regarding the landlord's failure to protect his right to quiet enjoyment of his rental unit due to harassment from the other tenant. As an agreement has been reached in this matter between this tenant and the landlord and this agreement was also communicated to the other tenant at the hearing and an agreement was also made by him; I find I am not required to make a decision in this matter. However, I would caution the landlords that if the tenants do not comply with this agreement they must meet their obligations as landlords and deal with the conflict in an appropriate manner as specified under the *Residential Tenancy Act (Act)*.

With regards to the tenants claim for compensation and an Order for the landlord to comply with the *Act* regarding the use of the workshop and power tools; It is my decision that the landlords have not acted in accordance with their own rules and regulations which state, in part, that no loud or disturbing noise shall be allowed at any time. It appears that the landlords have sanctioned the use of power tools in the workshop which is in close proximity to the tenants unit. The landlord argues that this workshop is in place for all tenants to use and is a facility provided for tenants. The landlords argue that the noise from power tools is not continuous with the exception of a two week period when work was being done to sand the benches for the complex. The landlords also argue that the tenant was offered an alternative unit in another area of the complex away from the workshop.

I have considered these arguments and it is my decision that the tenant did not agree to move to another part of the complex. In that case when this offer was rejected it is the landlords' responsibility to provide quiet enjoyment to tenants and there is nothing in the *Act* which states a tenant must take up an offer from the landlord to move his residence because the landlord cannot comply with the *Act* or their own rules and regulations. However I also find that the landlords are in a difficult position as they cannot remove a facility provided by them for tenants. In light of this it is my decision that the landlords must act reasonably to restrict the opening days and times of the workshop and the use of the power tools in order to preserve the other tenants right to use this facility and protect this tenants right to quiet enjoyment. The landlords other option would be to move the workshop to another area of the complex as suggested by the tenants advocates.

Having taken all arguments into consideration it is my decision that the landlord has failed to comply with s. 28(b) of the *Act* by permitting these disturbances to take place or to allow them to continue after written complaints from the tenant. The tenant has applied for a Monetary Order on both counts of his claim however I limit his claim to \$50.00 per month for each month since he first complained to the landlord in writing about the noise from the workshop on May 13, 2010. The tenant will receive a Monetary Order for **\$850.00** pursuant to s. 67 of the *Act*.

Conclusion

Both Parties have reached a partial agreement during the hearing and this agreement has been recorded above by the Dispute Resolution Officer pursuant to section 62 of the *Act*.

I HEREBY FIND in partial favor of the remainder of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$850.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to restrict the times the workshop can operate and place restrictions on the use of power tools in this area. The landlord must restrict the opening hours for the workshop to open from 2.00 p.m. to 4.00 p.m. on three days a week. These days may be decided by the landlord and the landlord must enforce these days and times. The landlord must also enforce the use of any power tools in this area within the scope of these opening hours.

The tenant is at liberty to reapply if the landlords do not strictly enforce the use of the workshop and power tools and the agreement reached between the tenants and landlord.

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: October 06, 2011.

Residential Tenancy Branch