Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order for monetary compensation for losses under the tenancy agreement of the Act and to recover the filing fee for the Application. The Tenant alleges that the harassment of Landlord caused her to lose quiet enjoyment of the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The tenancy began in August of 2008. According to the uncontradicted submissions of the Tenant the tenancy went smoothly until June of 2010, when the Landlord began a series of attempts to evict the Tenant.

I note the Tenant submitted many pages of evidence and also testified during the hearing. I summarize the evidence and testimony below.

The Tenant alleges that the problems started in June of 2010, when the Agent for the Landlord appeared at the rental unit and told the Tenant she could no longer store items in the garage at the rental unit. The Agent informed the Tenant that the Landlord had said she never intended for the Tenant to use the garage as storage. The Tenant testified she had used the garage for storage for nearly two years since moving in. The

Agent told her she had to move her property out of the garage by July 1, when the locks would be changed. According to the Tenant, although she complied with the request and removed her items, the locks were never changed.

The Tenant also alleges that on November 20, of 2010, the furnace had stopped working and the Landlord was contacted. According to the Tenant the furnace went unrepaired for eight days, until the Tenant's mother contacted the Landlord.

According to the Tenant, during this conversation the Landlord told the Tenant's mother that the Tenant was too much trouble, and the Landlord should just say her daughter was moving into the rental unit and end the tenancy.

On April 1, 2011, the Tenant returned home to find taped to the door of the rental unit a two month Notice to End Tenancy for Landlord's use of the property. The Landlord alleged in the notice that a close family member would occupy the rental unit. The Notice to End Tenancy was ostensibly signed by the Landlord's Agent (the "First Notice"). The First Notice had an effective date of June 1, 2011.

The Tenant contacted the Agent for the Landlord and he denied having signed the First Notice himself. He told the Tenant he had posted an envelope to the door at the request of the Landlord, but had not looked in the envelope. He told the Tenant to talk to the Landlord as she wanted her daughter to move into the rental unit.

The Tenant discovered several mistakes on the First Notice, such as it not having an address for service for the Landlord or correctly identifying the rental unit as the one the Tenant occupied. The Tenant left messages for the Landlord regarding the First Notice. She explained that she would fight this First Notice even though it had mistakes and would fight any other notice as she felt the Landlord was not ending the tenancy in good faith.

Following this the Landlord's daughter contacted the Tenant and asked her why she was being so difficult and why did she not just leave the rental unit. The Landlord's daughter informed the Tenant she intended to move into the rental unit herself.

On April 30, 2011, the Landlord served the Tenant with a second two month Notice to End Tenancy (the "Second Notice"). This Second Notice had an effective date of June 30, 2011. It states the reason for ending the tenancy is that the rental unit is owned by a family corporation and a close family member intends to move in. The Tenant provided in evidence a title search print out for the rental unit property and this indicates it is owned by the Landlord in her personal capacity, not a family corporation.

On May 6, 2011, the Tenant filed an Application for Dispute Resolution to dispute the Second Notice. A hearing was scheduled for May 31, 2011.

After she served the Landlord with her dispute resolution documents, the Agent for the Landlord contacted the Tenant and informed her the Landlord would be withdrawing the Second Notice, as she no longer required the rental unit. The Tenant went through the process of ensuring the Landlord's Agent acknowledged the withdrawal of both the First and Second Notices in writing. Early on May 13, 2011, the Tenant cancelled the hearing.

In the evening of May 13, 2011, the Landlord contacted the Tenant and said her daughter had changed her mind again and still wanted to move into the rental unit.

The Tenant warned the Agent for the Landlord that if the Landlord tried to evict her again without good reason, the Tenant would file another Application and request monetary compensation for stress, mental suffering and harassment. I note that in her written submissions, the Tenant claims that on several occasions the Agent for the Landlord told the Tenant that if the Landlord wanted the Tenant to go, she had to go.

On August 5, 2011, the Tenant received a Notice of Hearing for dispute resolution filed by the Landlord. The Landlord was alleging that a Notice to End Tenancy was served on the Tenant on May 31, 2011. The Tenant denies ever having receiving a Notice to End Tenancy on May 31, 2011.

On August 26, 2011, the Landlord's Application was dismissed at the hearing due to insufficient evidence. I also note the Dispute Resolution Officer in that case found the Landlord had changed the dates on the Notices to End Tenancy and did not submit any Notice dated May 31, 2011.

On August 27, 2011, the Landlord served the Tenant with a third Notice to End Tenancy again stating that a close family member was moving into the rental unit.

The Tenant states she could not stand the ongoing problems with the Landlord anymore, and gave the Landlord her own Notice to End Tenancy in accordance with the Act.

The Tenant further alleges that the Landlord's daughter did not move into the rental unit.

The Tenant requests a monetary order return of half of the monthly rent paid of $820.00 per month, for five months, totalling $2,050.00

In reply, the Landlord stated that the Tenant would not have suffered anything if she had just moved out after the First Notice was given to her.

The Landlord further testified that her daughter is still moving into the rental unit “bit by bit”. The Landlord told the Tenant she can be sure her daughter will live there.

The Landlord testified that the Tenant’s mother was very aggressive, even though she seldom talked to her.

The Landlord then finished her testimony stating she had nothing more to say.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached section 28 of the Act by not ensuring the Tenant had quiet enjoyment of the rental unit.

Policy Guideline 6 to the Act states,

> Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. *Dictionary of Canadian Law*, Second Edition, Carswell Toronto, 1995, p. 542.
>
> As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however, all reflect the element of ongoing or repeated activity by the harasser.

I find that the Landlord repeatedly acted in a high handed manner toward the Tenant by issuing her notices to end tenancy, which were given in bad faith. While I have condensed the evidence submitted by the Tenant, it is clear by the ongoing problems recounted here and many more that were set out by the Tenant, that the Landlord conducted an ongoing campaign for several months to end this tenancy. This campaign was conducted in bad faith against the Tenant, with no evidence of a proper motive to end the tenancy.

I find the Landlord and Agent's harassing behaviour resulted in the Tenant's loss of quiet enjoyment of the rental unit. I further find the Landlord issued false notices and fraudulently signed one of these in the name of her Agent. It is difficult to imagine why the Landlord did this, since she could have simply signed the Notice in her own capacity as the Landlord. Nevertheless, I find the Landlord acted in a harassing manner and as a result the Tenant suffered in a loss of quiet enjoyment.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant has established a total monetary claim of **$2,100.00** against the Landlord, comprised of $2,050.00 for the return of half the rent for five months (5 x $410.00) and the $50.00 filing fee for the Application. This order must be served on the Landlord and may be enforced in the Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 25, 2011.

Residential Tenancy Branch