



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement. The Tenant said she served each of the Landlords, R.H. and T.P., named on her application with the application and Notice of Hearing on September 21, 2011. The Tenant said she filed an amended application on October 17, 2011 and served it on the Landlords on November 7, 2011 however I find that the late service is of no consequence given the only amendment was to include the name of the Tenant's advocate on the application. At the beginning of the hearing, the agent for the Landlords, B.L., claimed that the Housing Society should have been named as the Landlord because it is the owner of the rental property and the employer of the Respondents, R.H. and T.P. The Parties agreed to amend the Tenant's application by including the Housing Society as a Landlord.

The Respondents also argued however, that R.H. and T.P. were not properly named as parties to this proceeding. In particular, R.H. said she is just the property manager and T.P. (who resides in the rental property) only assists her in some of her duties such as collecting rent. R.H. and B.L. (the agent for the Landlords) claimed that only R.H. had authority to enter into and end tenancies and that T.P. did not have any authority to enter into tenancy agreements. The Tenant argued however that T.P. did sign her tenancy agreement on behalf of the Landlord. R.H. and B.L. then argued that if T.P. signed the tenancy agreement it was only as a witness. However, the Tenant provided a copy of her tenancy agreement dated September 30, 2009 which shows on the 2nd page that T.P. signed it on behalf of the Landlord(s) and not simply as a witness to the Tenant's signature. The Tenant also provided a copy of a Rent Subsidy form dated April 20, 2010 signed by T.P. on behalf of the Landlord.

Section 1 of the Act defines a Landlord as "the owner of a rental unit, the owner's agent or another person who, on behalf of the Landlord permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement and includes a former Landlord." Given that R.H. and T.P. have exercised powers and performed duties on behalf of the owner of the rental property, I find that they are properly named as Landlords in these proceedings. T.P. did not attend the hearing although served with the Tenant's hearing package as required by s. 89 of the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

The Tenant moved into the rental property in 2008. On October 1, 2009, the Tenant moved from another suite in the rental property to the rental unit in question. The Landlord, T.P., resides in a suite next to the rental unit. T.P. and the Tenant share a common wall; in T.P.'s residence this includes the bathroom area and on the other side of the wall in the rental unit, the Tenant's bedroom and bathroom. While the Tenant is eligible for a subsidy, her rent is \$335.00 per month.

The Tenant said when she first moved into the rental unit she could hear T.P. running the water down the bathtub drain for intervals of 45 minutes, sometimes 3 times per day. The Tenant said the screeching noise made by the water running through the old plumbing was unbearable especially since she has chronic pain and is sensitive to noises. The Tenant said she complained to R.H. about the noise and R.H. investigated and agreed to insulate the wall in an attempt to reduce the noise however it had little effect. The Tenant also claimed that T.P. would flush her toilet so that it made a loud noise and she would bang on the wall adjoining the Tenant's bedroom in the middle of the night. The Tenant further claimed that T.P. would leave the volume on high on her television all night long and wake her up and bang her closet and front door. As a result of these ongoing disturbances, the Tenant claimed she believed T.P. was intentionally harassing her so that she would move.

The Tenant said she made verbal complaints to R.H. and B.L. but nothing happened. The Tenant said she also complained to T.P. but she just told her to "suck it up" and "catch her." Consequently, the Tenant said she sent a complaint letter to the Board of Directors dated November 16, 2010 regarding the disturbances but received no response until January 13, 2011 when she got a letter from R.H. In that letter, R.H. acknowledged that the plumbing was old and created noise but claimed that the owner (being a non-profit society) could not afford to fix it. R.H. said she had spoken to T.P. who agreed to alter her bathing schedule and she asked the Tenant to respect T.P.'s rights. The Tenant said she began documenting the disturbances in approximately October 2010. The Tenant said she also made 6 audio recordings which allegedly recorded the loud noises made by R.H. however, they were not audible on the recordings and the Tenant could only recall the date that one of the recordings was made. The Tenant further provided a witness statement from her daughter who claimed that on one occasion when visiting the rental unit, she was astonished at the loud noise made by T.P.'s plumbing and also claimed to have overheard T.P. making loud noises from engaging in sexual intercourse.

The Tenant said she was also disturbed by noises made by the occupant of the suite above her. The Tenant said this person was an associate or friend of T.P.'s and

therefore she believed this person and T.P. were conspiring to harass her. For example, the Tenant claimed that when T.P. banged on her wall, the occupant above her suite would often follow suit and drop things on the floor. The Tenant said although these disturbances were ongoing, there was nothing she could do because the Landlords refused to do anything about it. The Tenant noted, for example, that on May 4, 2011 she received a letter from R.H. claiming she was making "false allegations" to the agent for the Landlords, had been disturbing T.P. by banging on her wall and that any further "violations" would result in her being served with a Notice to End Tenancy. The Tenant said she also received a letter from R.H. dated November 22, 2011 in which R.H. alleged that the Tenant was harassing T.P. by naming her as a party to these proceedings. In particular, R.H. stated in her letter that "we find this extreme interference with the tenant, T.P., and cause for termination of the tenancy agreement between yourself and [the owner].... Unfortunately you have left us no option other than to have to ask you to leave [the rental property]. You may expect a Notice to vacate for Cause following the Dispute Resolution Hearing December 7, 2011."

The Tenant said that since she filed her application for Dispute Resolution, the Landlords have ignored her verbal requests to repair a sliding glass door, a sink tap, her toilet and electric heater thermostat. The Tenant also claimed that R.H. threatened another occupant of the rental property with eviction if he gave evidence in support of her application. The Landlords argued that they have a procedure whereby a resident must submit a work order for repairs and the Tenant failed to do so. The Tenant argued that she frequently makes requests for repairs to the property maintenance person who does them without having a work order.

The Landlords admit that the plumbing in the rental property is old and makes noise but they claim that they have taken reasonable steps to try to resolve the problem. The Landlords said they tried to insulate the adjoining wall but admit it had little effect. The Landlords said they also asked T.P. to limit the hours she bathed and she agreed to do so. The Landlords said they also offered the Tenant another suite in the rental property but she refused to move (which the Tenant denied). The Landlords said that although the Tenant's suite is classified as a "semi-handicapped suite" because it is wheel chair accessible, the Tenant is not disabled. The Landlords said they agreed to rent the suite to the Tenant because it was close to the laundry room and there were no disabled occupants who required the suite at the time. The Landlords claimed that although the plumbing is noisy in the whole rental property, the rental unit and T.P.'s unit are the only 2 suites in the rental property where the bathroom wall of one unit shares the same wall as the bedroom of another unit.

The Landlords said they had no complaints about T.P. from the previous occupant of the rental unit who resided there next to T.P. for approximately 10 years (which the Tenant denied). The Landlords also said they have had no complaints about T.P. making noise in the rental unit from other occupants of the rental property however they admitted that T.P. has no other neighbours. The Landlords argued that it was the Tenant who was harassing T.P. by banging on her wall. The Landlord, R.H., said she

does not believe the Tenant because she once claimed that T.P. was banging a closet door but on inspection she found that T.P. does not have closet doors (which the Tenant also denied). R.H. admitted that she has not investigated the Tenant's complaints about the occupant of the suite above her making noise because she did not believe the Tenant.

Analysis

In this matter, the Tenant sought compensation as she claimed her right to quiet enjoyment was breached as a result of another occupant, T.P., (who was also acting as R.H.'s management assistant at the relevant time) harassing her. The Tenant also claimed that she has been harassed by the property manager, R.H., who threatened to evict her when she complained about the alleged harassment by T.P.

Section 28 of the Act says (in part) that "a tenant is entitled to quiet enjoyment including, but not limited to the right to freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes free from significant interference." RTB Policy Guideline #6 (Right to Quiet Enjoyment) at p. 2 discusses the application of this section of the Act and harassment as follows:

"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. 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 on a balance of probabilities that there has been an unreasonable amount of noise made by T.P. in her rental unit that has been disturbing the Tenant. However, I also find that there is insufficient evidence to conclude that these noises are deliberate and made repeatedly for the purpose of harassing the Tenant as opposed to noises made in the course of using the property as living accommodations. Although I agree that it seems unusual that one would run water down a drain for 45 minute intervals multiple times per day, this together with T.P.'s alleged comments to the Tenant "to suck it up" and "to catch her" are not sufficient to conclude that T.P. was making noise solely in an attempt to harass the Tenant.

Although the Tenant also argued that the Landlords were refusing to make repairs in retaliation for her making her application in this matter, that was disputed by the Landlords and the Tenant provided no other evidence to corroborate that allegation. Similarly, the Tenant argued that R.H. threatened another resident of the rental property with eviction if he gave evidence in support of her application for dispute resolution. However this person did not give evidence at the hearing and therefore I find that this allegation is simply hearsay and accordingly I must give it little weight.

The Parties agree that the plumbing in the rental property makes an unreasonable amount of noise. The Landlords argued that they are not in a financial position to replace or repair it but they provided no evidence in support of this assertion. In any event, a Landlord's inability to afford repairs does not excuse him or her from the duty under s. 32 of the Act to repair and maintain the property and does not mean a Tenant's right to freedom from unreasonable disturbance must be extinguished when a Landlord cannot afford to address the problem. I find that the Tenant has been unreasonably disturbed by the plumbing noises (for one) and has brought this to the Landlords' attention on a number of occasions. I find that the Landlords took some steps such as adding insulation to the wall in an attempt to reduce the noise but that this has had little effect. I also find that the Landlords have asked T.P. to alter her bathing schedule and although they claim she has done so, I cannot give this evidence a lot of weight because it is hearsay.

I further find that the Landlords have offered the Tenant another suite in the rental property. Although the Tenant denied that the Landlords offered her another suite in the rental property, I find that the Tenant acknowledged this in her letter to the owner dated November 16, 2010 which states as follows:

"It was suggested to me by R.H. that I move apartments, or face eviction if I complain further about [T.P.] I have a legal right to complain about this harassment, and will not be moving apartments as I am disabled and currently in a disability suite. It would not make sense for me to move into a non disability suite, nor do I think I should be subject to the hardship of a move due to irresponsible management."

Section 7 of the Act says that a party who suffers damage or loss must do whatever is reasonable to minimize their losses. This means that in certain circumstances, it may be necessary for a Tenant to move if there is no other option available to minimize their losses. In these circumstances, however, I am not satisfied that the Tenant is obligated to move to mitigate her damages. Although the Landlords argued the rental unit is unique in that no other suite in the rental property has a bedroom wall that shares a wall with the bathroom from another suite, I find that this does not mean that the plumbing noises would be removed. Furthermore, I find that the Landlords have not exhausted all of their options and in particular, there is no evidence that they have considered moving T.P. to another suite. I find that the Landlords likely have not considered moving T.P. because (as set out below), I find that it is the intention of R.H. to deal with the Tenant's complaints instead by threatening to end her tenancy.

I find that early in the tenancy, the Tenant brought noise complaints to R.H.'s attention and on investigation, those complaints were founded. In other words, R.H. was aware of the noise caused by the plumbing. I find however, that by January of 2011, R.H. became upset over the Tenant's numerous complaints and took the position that the Tenant's complaints were intended to harass T.P. Aside from one letter to the Tenant dated May 4, 2011, alleging the Tenant had banged on T.P.'s wall, the Landlords

provided no other evidence of the Tenant's alleged harassment of T.P. and T.P. did not attend the hearing to give any evidence of the alleged harassment.

I find that the Tenant was frustrated at getting no response to her complaints and made a written complaint to the Housing Society on November 16, 2010 which appears to have been ignored by the Landlords. It is clear in her responding letter to the Tenant in January 2011, that R.H. believed the Tenant was a nuisance and that her complaints were not credible or worthy of being investigated. R.H. admitted that she did not investigate the Tenant's complaints about the occupant of the suite above her making noise because she did not believe the Tenant. R.H. sent the Tenant a letter dated May 4, 2011 in which she threatened to evict the Tenant if she made any further complaints about noise. To make matters worse, R.H. also sent the Tenant a letter dated November 22, 2011 in which she threatened evict the Tenant for naming T.P. as a party to these proceedings.

I find that the two threats by R.H. to evict the Tenant if she made complaints about noise do not constitute harassment only because I find that 2 instances do not qualify as "ongoing or repeated activity. However, I find that had there been sufficient evidence that the Landlords retaliated against the Tenant for making her application by refusing to make repairs or by threatening another resident as the Tenant alleged, then I would have found harassment. In any event, I find the threats are very serious and demonstrate the hostility that R.H. has for the Tenant and which was also apparent during the hearing when R.H. was giving her evidence. The seriousness of the kind of threats made by R.H. is the reason for s. 95(2) of the Act which states that **"a person who coerces, threatens, intimidates or harasses a tenant or landlord in order to deter the tenant or landlord from making an application under this Act or in retaliation for seeking or obtaining a remedy under this act commits an offence and is liable on conviction to a fine of not more than \$5,000.00."**

In summary, I find that there is *insufficient* evidence of harassment by the Landlords at this time. However, I do find that there is sufficient evidence that the Tenant's right to quiet enjoyment has been disturbed by an unreasonable amount of noise created by the plumbing in the rental property and the unusual frequency with which T.P. makes use of it. I find that the Tenant made a written complaint about the plumbing noises and other alleged noises made by T.P. to the Landlords on November 16, 2010 but that the Landlords failed to take any steps to investigate her complaints. As was indicated in R.H.'s letter in January 2011, the Landlords took the position that the Tenant could move if she was disturbed by the noises. I find however that the Tenant had no obligation to move from the rental unit to relieve the Landlords of their obligation to provide her with premises that were free of unreasonable disturbances created by the aged plumbing (for one). I further find that R.H.'s letter of May 4, 2011 indicates that the Landlords decided by that time that if the Tenant was not willing to move then they would evict her if she made any further complaints. I find that this showed complete disregard for the Tenant's rights under the Act.

Consequently, I find that the Tenant is entitled to be compensated \$100.00 per month for 11 months for a loss of quiet enjoyment (ie. from the time she made her written complaint on November 16, 2010 to the time she filed her application for dispute resolution in this matter on October 17, 2011), for a total of \$1,100.00. I order pursuant to s. 72(2) of the Act that the Tenant may deduct this award from her rent by way of deducting \$300.00 for rent for each of January, February and March 2012 and \$200.00 from her rent for April 2012. If the Tenant is unable to satisfy the full amount of the award by deducting it from her rent, she may re-apply for a Monetary Order for the unsatisfied balance.

Conclusion

The Tenant's application is granted in part. 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: December 20, 2011.

Residential Tenancy Branch