



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, O

Introduction

This matter dealt with an application by the Tenant for monetary compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act, regulations or tenancy agreement and for other considerations.

The Tenant said the Landlords were serviced with the Application and Notice of Hearing (the "hearing package") by personal delivery on January 30, 2012. Based on the testimony of the Tenant and the Landlords agreeing with the service of the documents, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlords and the Tenant in attendance.

Issues(s) to be Decided

1. Is there loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. Have the Landlords complied with the Act, regulations or tenancy agreement?
4. What other considerations are there?

Background and Evidence

This tenancy started in July, 2009 as a month to month tenancy. Rent is \$ 352.00 per month payable on the first of each month. The Tenant paid a security deposit of \$200.00 in July, 2009.

The Tenant said this is the third application over the last year for the Landlords to comply with the Act. The Tenant said another tenant H.M. in the rental complex has been harassing him and other tenants in the building ever since he moved in to his rental unit in July, 2009. The Tenant said tenant H. M. harasses him in child like ways. The Tenant said the tenant H.M. makes faces at him, makes rude jester to him, has yelled at him and has made physical threats at him, although the Tenant said H.M. has not physically attacked him. The Tenant said tenant H.M. does this to him 10 to 12 times a day and this makes it living at the rental complex unmanageable and frustrating. In addition since this application has been made the tenant H.M has been charge by the Police for an incident when the tenant H.M. allegedly tried to hit the Tenant/Applicant

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with his car. The Landlords' counsel said this happened after the Tenant's application was made and it has not been proven in court therefore it should not be given much weight in this dispute hearing. The Tenant continued to say that in the previous dispute resolution Decision of October 6, 2011 there was a mediated settlement for the harassment part of the dispute in which the parties agreed to:

- The tenants agreed they would have no further contact either physical, verbal or written.
- The tenants agreed they would 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 agreed 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.

The Tenant said he has written several complaint letters about tenant H.M. and the Landlords since the last dispute hearing date September 29, 2011. The first complaint was written October 20, 2011 and outlined an incident with tenant H. M. on October 18, 2011, in which H.M. made faces at the Tenant and walked funny which the Tenant said was to make fun of his friend another tenant J.W. who has a disability. The Tenant provided J.W. as a witness and J.W. gave affirmed testimony that tenant H.M. did make faces at them and imitated his walk. Witness J.W. said he wrote a letter of complaint to the Landlord, because he was offended by tenant H.W.'s behaviour. The Witness J.W. said the Landlord did come to talk to him about the incident about 5 weeks later. The Landlord said they received Witness J.W. complaint letter and they tried to contact Witness J. W. on October 25 and 31 and November 1, 2 times on November 3 and November 7, 2011. The Landlord said they contacted witness J. W. on November 15, 2011 and found contradictory evidence to what the Tenant said so the Landlord did not take any action.

The Tenant said his second letter of complaint was dated October 27, 2011 to the Board of Directors with regard to the behaviour of the volunteer Manager C.K. with respect to the night of October 25, 2011. On that night the Tenant said the Manager C.K. banged on his door and yelled at him. The Tenant said he told the Manager C.K. to serve documents to his advocates and to only talk to him through his advocates. The Landlords said they have sent all documents and correspondence through their lawyer to the Tenant's advocate since that night.

The Landlords submitted a letter dated November 9, 2011 in response to the Tenant's complaint about the Manager C.K. The Landlords' wrote in that letter that they found discrepancies in the Tenant's version of what happened and Manager C.K. recollection of what happened. As well in that letter the Landlords said they are taking the view that because of the number of complaints from the Tenant and the Tenant's Advocates that the Board of Directors is now viewing the Tenant's actions as harassment to the Society. The Tenant responded to the Landlords' letter of November 9, 2011 and requested to know what the discrepancies between Manager C.K. story and his story were.

The Tenant wrote another letter dated November 8, 2012 to the Landlords explaining an incident in which the Tenant's door was damaged in an attempted break in. The Tenant intimated that because the dead bolt was unlock with a key and only the chain lock was damaged, he believes that the Landlords may have caused the damage to his door. The Tenant said this is an example of how the Landlords are harassing him. The Landlords said they did not break into the Tenant's rental unit.

The Tenant continued say on February 15, 2012 he wrote the Landlords to make a complaint about tenant H.M. in that he believes that tenant H.M. tried to hit him with his car. The Tenant made a report to the Police and tenant H.M. has been charged for the incident. The Landlords said this incident took place after the Tenant filing his application and it is only an allegation by the Tenant at this time. The Landlords said that if tenant H.M. is found guilty of trying to hit the Tenant with his car they will issue an Eviction Notice to tenant H.M., but until that time the Landlords said they have not had conclusive proof to issue a Notice of Eviction to either tenant H.M. or to the Tenant/Applicant.

The Tenant closed his remarks by saying he is claiming \$100.00 per month for 24 months for his loss of quiet enjoyment of his rental unit because of harassment by tenant H.M. and the Landlords. The Tenant continued to say the monetary claim is not that important to him, but he wants the harassment from tenant H.M. to stop and for the Landlords to take action to stop the harassment from tenant H.M. As well the Tenant said he wants the Landlords to respect his position and for the Landlords to help him not side against him.

The Landlords' counsel said in his closing remarks that the Landlord's Managers are volunteers for the Society so it is difficult for them to be at the rental complex all the time and see everything that is going on. The Landlords' counsel continued to say that the Landlords have looked into all the Tenant's complaints and they have found inconsistency in the stories about what happened and they did not find conclusive proof that warranted any action. As a result the Landlord is frustrated because they have two tenants that are disputing and the Landlords said they feel they do not have grounds to

evict either or both of the tenants. The Landlords' counsel continued to say they tried to put the previous mediated agreement in writing for all parties to sign, which the Landlords and tenant H.M signed, but the Tenant /Applicant refused to sign it saying that it was not part of the decision to put the agreement in writing. The Landlords' counsel said the Tenant was correct, but it did show the Tenant's level of cooperation with the Landlord.

Analysis

Section 28 of the Act says 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.

In this situation there was much contradictory testimony and many allegations made from all parties. It is obvious that the dispute between the Tenant and tenant H.M has now escalated to a dispute between the Tenant and the Landlords as well as tenant H.M. This is partial due to the previous mediated settlement, which was part of the decision dated October 6, 2011, in which the last two clauses of the mediated settlement made the Landlord responsible to "fully investigate any written complaints" and to "take any necessary action against either tenant if they fail to comply with this agreement". Since that Decision and Order of October 6, 2011, the Tenant has written a number of complaints that he claims the Landlords have not investigated fully and have not take the necessary action as the tenants have failed to comply with the mediated agreement and Decisions of October 6, 2011.

I am sympathetic to the Landlords' dilemma that puts them into the middle of an unclear dispute between tenants, but the Landlords did agree to monitor the situation and take action if the tenants broke the agreement. It is clear that tenant H.M. broke the agreement and it is very possible the Tenant/Applicant broke the agreement as well. The situation has now escalated to a motor vehicle incident which may have put the Tenant/Applicant in physical damage. Consequently I find the Tenant has established grounds to show that the Landlords have not complied with the Decision issued on October 6, 2011 and as a result the Landlords have not complied with the Act. Further because the Landlords did not comply with the Act, I find the Tenant does have a loss of quiet enjoyment of his rental unit, because of the dispute with tenant H.M. and the Landlords lack of full investigation and action. Consequently, I find for the Tenant and I order the Landlord to full investigate written complaints about these two tenants and to respond to any complaints in written in a timely manner.

With respect to the monetary claim of the Tenant. There is two elements to the Tenant's claim; first the period of time the Tenant is claiming for which is 24 months from the start of his tenancy until now and secondly the Tenant is claiming \$100.00 per month for loss of quiet enjoyment for each month. I find the Tenant can claim from the dated of the first dispute resolution decision April 20, 2011, as that is when a loss of quiet enjoyment of his rental unit was established. Therefore I find the number of months the Tenant can claim a loss of quiet enjoyment of his rental unit is from April, 2011 to March 2012 or 11 months.

Further as there was much contradictory testimony and limited amounts of corroborating evidence to support the claims made, I find it is unclear who is responsible for the dispute and if all parties are genuinely working to resolve the situation. The Tenant has made a number of written complaints about tenant H.M. and the Landlord, but he did not present any evidence that he has tried to mitigate his loss or help resolve the dispute, which under section 7(2) of the Act an applicant has the responsible to do. As well, I took note that although the Tenant was in his rights not to sign the mediation agreement that the Landlords sent him, but it was view by the Landlords as a negative tactic by the Tenant in the dispute which did not help the situation. Consequently I find



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the Tenant must take some responsibility for the dispute and I limit his claim to \$50.00 per month for a total amount of $\$50.00 \times 11 \text{ months} = \550.00 .

Conclusion

I order the Landlord to comply with the Act and respond to written complaints in writing.

Pursuant to sections 67 of the Act, I grant a Monetary Order for \$550.00 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

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*.

Dispute Resolution Officer