



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, CNC, O

Introduction

This hearing was convened by way of conference call in response to applications filed by the tenants. The tenants applied on May 11, 2012 under file number 788872 for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application. The tenants also applied on May 29, 2012 under file number 791715 for an order cancelling a notice to end tenancy for cause. The files have been joined to be heard together.

The hearing did not conclude on June 15, 2012 and was adjourned for continuation to June 20, 2012.

The landlord and both tenants attended on both days of the hearing, and each gave affirmed testimony. The parties also provided evidence in advance of the hearing, however the landlord opposed the inclusion of evidence provided by the tenants that was not received within the time provided for in the Residential Tenancy Branch Rules of Procedure. The parties were given the opportunity to cross examine each other on the evidence and testimony, all of which has been reviewed and is considered in this Decision, with the exception of the late evidence of the tenants which is not considered in this Decision.

The landlord also had a witness who waited to testify, but was not called during the course of the hearing, largely due to time constraints.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?
Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on April 1, 2010 and the tenants still reside in the rental unit. The rental unit is a suite in the upper portion of a house, and the landlord occupies the lower level. Rent in the amount of \$1,400.00 per month, including utilities, is payable in advance on the 1st day of each month and there are no rental arrears. On March 24, 2010 the landlord collected a security deposit from the tenants in the amount of \$700.00 which is still held in trust by the landlord.

The landlord testified that at the outset of the tenancy, the landlord's daughter resided in the basement suite of the house. One of the tenants went into that suite and exited slamming the door. The landlord's daughter told the landlord that she couldn't stay there any longer and had already made a decision to move out. The landlord then decided to move in part-time. From the end of March until May the landlord's daughter didn't stay there much. A flood occurred in May so renovations were required and the landlord intended to start up a sewing business in that lower suite. In July, 6 industrial sewing machines were moved in, a countertop, shelving and lights. The landlord has 2 employees and a part-time worker.

The landlord further testified that she is a very conscious landlord and asked one of the tenants in January if they heard the machines and the tenant responded that they just hear buzzing.

The landlord testified that a 1 Month Notice to End Tenancy was issued to the tenants on May 23, 2012. A copy was served upon one of the tenants personally that day. A copy of the notice was provided for this hearing and it contains an expected date of vacancy of June, 30, 2012. The reason for issuing the notice is stated to be that the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord." The notice is in the approved form, is signed by the landlord and contains the address of the rental unit.

The landlord further testified that on May 20, 2012 at 3:00 a.m. the landlord was awakened by the tenant stomping, smashing things, yelling loudly foul and threatening language, and the landlord heard the tenant yell the landlord's name. The landlord then heard another man try to calm the tenant down, and the landlord called 911. More smashing was heard, and the person on the emergency line told the landlord to lock the door and lock herself in the bathroom in order to have 2 locked doors between the tenant and the landlord. The landlord stayed in the bathroom until the police arrived and an officer spoke to the tenant. The emergency personnel called the landlord back advising the landlord to talk to the tenant and the police officer. The tenant was drunk, and the officer said that he had calmed the tenant down. By then it was 4:00 a.m. and the landlord had to be up by 6:00 a.m. for work.

At 6:00 a.m. the landlord heard more stomping and the tenant doing laundry. The landlord called her daughter to pick her up, and the landlord's daughter and her husband arrived around 7:15 a.m. The landlord's son-in-law drove the landlord's vehicle with the landlord as passenger and her daughter followed in her vehicle to the daughter's residence. The landlord's daughter told the landlord that she saw a silver Honda pulling out of the driveway, which the landlord believes belongs to the tenant. The landlord stated she was very shook up.

The landlord also testified that on May 22, 2012 the landlord went to the house accompanied by a friend who made sure the landlord got into the lower suite safely, and the landlord stayed there that night. The friend returned in the morning and witnessed the landlord serve the tenant with an evidence package. The landlord stayed there the nights of May 22 and 23rd but has not been there since.

The landlord further testified that this type of disturbance has not happened before.

The first tenant testified that the tenancy began in April, 2010 and from then until the landlord's business started, all was fairly cordial. Then the landlord told the tenants that she was moving her daughter's sewing business into the rental unit. The landlord told the tenant that some renovations were required and the tenants wouldn't even notice. That proved to be true at first and from the end of the summer to the fall, 2011 the landlord had no work. September and October it became 5 days per week. It wasn't quiet at that time but not too bad. It became excessive when the landlord obtained a contract for BC Place and excessive hours were spent on the sewing machines. The tenant spoke to the landlord in the New Year about slamming doors starting to occur early in the morning, and believe it was a friend of the landlord. The number of employees also changed. After April 25, 2012 the business ended at 4:00 or 4:30 p.m. but started up at 7:30 a.m. Plenty of times the tenant could hear the humming of industrial sewing machines and the radio. The house is a single family dwelling with a suite in the basement where the landlord conducts business. It has become exhaustive for the tenant's wife who was expecting a child and also had a 2 year old child.

The tenant testified that he was unheard by the landlord, having spoken to the landlord 3 to 5 times between October to March. The landlord doesn't live there but shows up toward the end of each business project. The landlord told the tenant she would talk to employees about noise. The tenant testified that it would be okay briefly, but the humming remained and slamming doors would start up again. It became exhausting.

After the tenants filed for dispute resolution, things got out of hand; the landlord started writing letters and calling the tenants, and at one point told the tenant that a by-law enforcement officer was coming to the house and asked the tenant to move a trampoline. Then the tenant got a letter from the landlord saying that the landlord's insurance company instructed her to move the trampoline because it was a risk, but the tenants had already taken it down.

The tenant further testified that letters provided by the landlord from witnesses are in response to a letter the landlord wrote to the tenant regarding movie rentals. Cable is included in the rent and the tenants offered to pay for movies but the landlord had responded that as long as they were not excessive, it was okay. Then the landlord told the tenant that he couldn't have HD+ and accused the tenant of accessing the cable account. Up until May 6, 2012 the tenants received no requests from the landlord to pay for movies. On that date, the landlord gave the tenant a handwritten bill for \$105.00 covering the period of November 13, 2010 to January 16, 2012. The tenants were not given any of the cable bills, just the handwritten bill with an adding machine tape attached. The tenants did not pay it but paid the landlord \$16.00 for the HD+; the landlord has not yet cashed the cheque.

The tenant further testified that the landlord had no complaints for the tenants until the tenants applied for dispute resolution. After that the landlord had her friend deliver letters to the tenants at early hours of the morning, and once to scold the tenants about furniture being piled up under a balcony. The tenants' teen-aged daughter had locked herself out of the house and stacked furniture to access her home. The letters are full of contradiction and none speak to the tenants' complaints about noise from the business, only character bashing. At least two of the letters were ripped up by the tenant's wife in front of the landlord out of being totally exasperated.

The tenant also testified to going out with friends to have a few drinks on May 20, 2012 and admitted that he was probably loud when he got home. While going to bed, the tenant tripped over some toys, hit the dresser and the DVDs and television fell onto the floor. The landlord's bedroom was directly underneath, and the tenant did curse but at no time uttered the landlord's name. The police showed up and spoke to the tenant for about a half hour and told the tenant to sleep it off. He stated that the police officer didn't think it was as serious as the landlord lead it to be or the officer would have taken the tenant away. The tenant completely disagrees that the landlord's name was mentioned that night. It was an unfortunate event and the tenant had no malicious intent.

The tenant also testified that the landlord issued the notice to end tenancy out of retaliation for the tenant's first application which was for a monetary order for loss of

quiet enjoyment of the rental unit. When asked if the tenant thought the landlord would call 911 if the landlord wasn't fearful, the tenant replied that the landlord's correspondence had become more nasty and believes that the landlord would not have spoken to the tenant that night even if the landlord wasn't afraid. The tenant does not believe the landlord was fearful, but called the police to bolster the landlord's position in evicting the tenants.

The other tenant testified that the notice to end tenancy was obviously issued out of retaliation. The tenant was not in the rental unit during the evening of May 20, 2012, but testified that this certainly was a one-time incident but the tenant's first application has been going on for months. The landlord had started an unlicensed business in the lower level of the house that had employees and industrial sewing machines. The landlord had promised to correct the situation but didn't. Then a person looking for the landlord's business walked into the rental unit. If the landlord had a business license, the landlord would be permitted to erect signs to prevent people from walking into the rental unit thinking it was the landlord's place of business.

The tenant called the Residential Tenancy Branch, then City Hall to find out if the landlord could have a home business and a rental unit in the same complex. The tenant learned that the landlord could as long as the landlord had a business license. The tenant checked with City Hall and the landlord did not have a business license.

The tenant also testified that the landlord had started the business last July which has caused noise from employees and sewing machines, and affects parking. The landlord promised to talk to the employees, but the problems didn't stop. Although the tenancy agreement is silent with respect to parking, the tenant testified that at times cars are parked behind the tenants' vehicle or the tenants have to park elsewhere. Further, the sewing machines cause a constant humming or buzzing noise which is annoying. The machines run Mondays through Fridays from 7:30 a.m. to 4:00 or 4:30 p.m. and sometimes later. The tenant works shift work and doesn't always get weekends off. The other tenant works 7 days per week.

The tenants claim \$1,100.00 per month against the landlord since the business opened in July, 2011 because the market rent appears to be that amount. The tenant further testified that the landlord didn't get the business license until April 25, 2012.

Analysis

Firstly, with respect to the notice to end tenancy, the landlord testified to being frightened by the tenant on the evening or early morning hours of May 20, 2012. The tenancy began two years prior and the landlord testified that such an incident had never happened before. The police arrived and spoke to the landlord and the tenant separately and told the tenant that he didn't believe it was as serious as the landlord had indicated in the 911 call. The tenant did not speak to the landlord or attend the landlord's residence, and I question what exactly the landlord heard. The landlord testified that the tenant spoke the landlord's name along with profanities which scared the landlord. The tenant testified that he had been drinking, was home alone and tripped on toys causing the television and other items to fall. I'm sure that was a loud noise coming from the upper rental unit of the house. The landlord has not testified to any threats made by either tenant or any reason to be fearful of the tenants prior or since. During cross examination, the tenant was asked by the landlord if the tenant believed the landlord would call 911 if the landlord was not afraid. The tenant replied that yes, the landlord wouldn't have spoken to the tenants even if the landlord wasn't afraid and the landlord's correspondence had become more nasty since the tenants applied for a monetary order. It's clear in the evidence that the landlord had a friend deliver messages to the tenants, but the tenants also contend that the landlord started writing letters and issued the notice to end tenancy only after the tenants had applied for dispute resolution claiming a monetary order for loss of quiet enjoyment. I have reviewed the letters exchanged between the parties and note that the tenants' application was filed in May 11, 2012 and the letter exchange began prior to that. However, I also find that the trampoline issue and the cable bill issue have only become issues with the landlord since the tenants applied for a monetary order as against the landlord.

I have also reviewed the letters provided by the landlord of witnesses, who did not testify, but the content of those letters do not address the issues before me. None of the letters deal with the tenants' complaints or the reasons for issuing the notice to end tenancy. I agree with the tenant that the letters are character bashing and speak to irrelevant issues for this hearing.

The *Residential Tenancy Act* states that:

28 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.

The landlord has a responsibility to adhere to the contract made between the landlord and the tenants, and that contract is to provide the tenants with a rental unit that is free from unreasonable disturbances. The tenants advised the landlord of the disturbances experienced by the landlord's business in the New Year, 2012, about slamming doors starting to occur early in the morning. After April 25, 2012 the business ended at 4:00 or 4:30 p.m. but started up at 7:30 a.m. It seems, in the evidence before me, that the landlord agreed to deal with the disturbances, but any fix was temporary at most. The tenants claim \$1,100.00 per month from July, 2011 to date. I find that amount to be excessive in the circumstances, given that the tenants have enjoyed the rental unit, however I also find that the landlord did not take the tenants' complaints seriously enough. I find that the tenants are entitled to a monetary order for 25% of the rent paid for the months of January, February, March and April, 2012, for a total of \$1,400.00.

Section 62 of the *Residential Tenancy Act* states as follows:

- 62** (1) The director has authority to determine
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
- (3) The director may make any orders necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or a tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I do not find it unreasonable that the landlord conduct business on the landlord's property whether or not another suite within that building is rented under a tenancy agreement. However, I do find it unreasonable that the tenants' right to quiet enjoyment is continually infringed upon by the landlord's business. I hereby order the landlord to conduct business that might cause disturbances to the tenants between the hours of

8:30 a.m. and 4:30 p.m. unless the tenants otherwise agree. I further order the landlord to ensure that employees abide by this time window, and refrain from attending at the tenants' rental unit prior to 8:30 a.m. I also suggest that the landlord speak to the employee about scolding or yelling at the tenants.

Since the tenants have been partially successful with the applications, the tenants are also entitled to recovery of the two filing fees, totalling \$100.00, for the cost of these applications.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,500.00. This amount may be deducted from a future month's rent payable or otherwise recovered.

I further order the landlord to comply with the *Residential Tenancy Act* by providing the tenants with their right to quiet enjoyment, and specifically by only conducting business that may disturb the tenants between the hours of 8:30 a.m. and 4:30 p.m., and that the landlord ensure the landlord's employees do not attend the tenants' rental unit prior to 8:30 a.m. for any business the employee may conduct on behalf of the landlord.

This order is final and binding on the parties and may be enforced.

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: June 22, 2012.

Residential Tenancy Branch