



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MDNC and FF

Introduction

This hearing was convened on the tenants' application of September 18, 2012 seeking a monetary award of \$22,370 on the grounds that the landlord has breached the covenant of quiet enjoyment. The tenants also sought variety of remedies to contribute to their continuing quiet enjoyment.

The tenants also seek limitations on the landlord's right to inspect the rental unit, including frequency and duration and whether the landlord may take photographs and be accompanied by another party and ordered to communicate with the tenants by way of their legal counsel.

The tenants further allege the landlord has permitted the activities of tenants in the basement suite to encroach on their quiet enjoyment of the rental unit.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for loss of quiet enjoyment and the various orders requested restricting

Background and Evidence

This tenancy began on July 10, 2007. Rent is \$1,860 per month plus utilities and the landlord holds a security deposit of \$900 paid on June 15, 2007.

In the past two years, this tenancy had been the subject of a number of hearings, summarized as follows:

Previous Hearings			
Dec.30, 2010 Sessions on Sept 17, Nov. 1, Nov 30, Dec 17, 2010	Tenants	CNC OLC RP FF	NTE set aside No order Repair by Jan 31, 2011 Granted
June 28, 2011 Sessions on June 6 and June 28, 211	Tenants	See Aug, 18, 201	Adjourned as LL did not receive ten's evidence. Reconvene dismissed as ten's did not appear
July 13, 2011 Aug. 18, 2011	Tenants	Application for Review Consideration – tenants not served due to mail strike CNR CNC MNDC RR OLC RP PSF LRE FF	Review hearing granted NTE set aside – improper rent increase NTE set aside \$310 – for stove, gate \$20 per mo until gate replaced No order Granted Granted Dismissed Granted
Sept 12, 2011	Landlord	Request for correction	Refused
Sept. 16, 2011	Landlord	Application for Review Consideration	Refused
Oct. 6, 2011	Tenants	MT & CNR MNDC OLC (LRE) FF	Error Dismissed Dismissed Dismissed
July 26, 2012	Landlord	OPC	NTE set aside
	Tenants	CNC LRE FF	NTE set aside Dismissed, leave re quiet enjoyment Granted

FF Recover filing fee from other party
 CNC Cancel NTE for cause
 CNR Cancel NTE for unpaid rent
 LL Landlord
 LRE Restrict landlord's right to enter

NTE Notice to End Tenancy
 OLC Order LL comply with legislation/agreement
 OPC Order of Possession for cause
 RP Order landlord to make repairs
 RR Rent reduction

Counsel for the respondent landlord submitted that the issues raised by the tenant in the present application were thoroughly canvassed in previous hearings and that they are *res judicata* and that the present application borders on vexatious.

Counsel for the tenants argued that while the fact pattern may be the same, previous hearings addressed the tenants' request for limitations on the landlord's right to inspect the rental unit while the present application stems from the loss of quiet enjoyment arising from the inspections.

I note from the decision of July 26, 2012, the Dispute Resolution Officer's (DRO's) analysis included the following comment:

"With respect to the tenant's application and their request for an order to restrict the landlord's access, I find that the landlord is already restricted by sections 28 and 29 of the Act and an order to follow the Act would be redundant. I find that, provided the landlord does comply with these sections in future, there is no need to impose further restrictions. However, should the landlord continue to violate the tenant's rights under these or other sections of the Act, the tenant is always at liberty to file an application for dispute resolution seeking a remedy.

"With respect to the tenant's allegations of harassment that were contained in the tenant's application and brought forth in the tenant's testimony during the hearing, these allegations were not considered at this hearing as the matter before me during the proceedings pertained solely to whether the One-Month Notice to End Tenancy for Cause should be cancelled or enforced. Only relevant evidence was used in the determination. Again, the tenant is at liberty to pursue other tenancy disputes through a separate application in future."

In brief, the DRO found the tenants were adequately protected by the "quiet enjoyment" provision of section 28 and the inspection limitation of section 29 of the Act and did not see need to impose additional restrictions. She did however leave the door open for the tenants to bring further application if need be.

In her decision of October 6, 2011, in dismissing the tenants' application, that DRO made the following more specific comment on the conduct of inspections:

“With respect to the inspections, the tenants were advised in the previous decision that a landlord has a statutory right to inspect a rental unit once a month. As long as the landlord gives proper notice, this right is absolute. In fact, if proper notice is given, a landlord may inspect a rental unit whether the tenant is present or not.

“A landlord is not required to conduct the inspection on their own nor are they prohibited from taking photographs during the inspection. As both of the previous hearings included issues about maintenance and repairs, the taking of photographs is reasonable.

“While the tenants may find the inspections uncomfortable the landlord’s conduct in conducting these inspections has not been contrary to the law.”

In the present matter, the landlord gave evidence that she has remained mindful of the findings of the July 26, 2012 decision and done her utmost to do her duty with minimal negative impact on the tenants.

She stated that she was on the property only on September 4, 2012 to deal with the downstairs tenants and on October 14, 2012 to see to a needed repair of the clothes dryer and to conduct an inspection, the first since April of 2012. The tenants objected to the landlord having felt it necessary to attend before having the dryer replaced but the landlord stated the tenants contributed to the delay by demanding strict adherence to the notice provisions.

I note that this is just one example in which the negative relationship between the parties escalates what should be routine events into conflict.

The tenant made explanation that, having lived in an oppressive country, she has emotional triggers associated with intrusion into her privacy for which the landlord might show more consideration.

The landlord stated that the rental building is her intended retirement home and she is particularly bothered to see deterioration of the expensive plantings and she is concerned about pool maintenance, although the tenants have engaged a professional company to maintain it monthly.

Analysis

I must reiterate the findings of previous decisions that the compliant conduct of inspections of the rental unit by the landlord does not constitute harassment.

As to the question of conflict between the upper and lower tenants, the landlord stated that she has attempted to resolve matters between them and will continue to do so, but noted that each complains about the other, particularly with respect to refuse around the rental property. I heard no evidence that would permit me to conclude that the applicant tenants have suffered a degree of loss of quiet enjoyment while the landlord stood idly by.

The landlord stated that, because she has been received with hostility on previous inspections, her family members have insisted that she be accompanied on inspections.

She said she had hesitated to direct all communication through the tenants' legal counsel out of economic concern for both parties, a position I find reasonable unless there is a specific proceeding pending.

Clearly, this is a strained tenancy that appears to have become increasingly so each time the parties go through dispute resolution with neither succeeding to any degree that would warrant the burdens placed on the applicant and respondent and the dispute resolution service.

In each instance, the grievances presented appear to fall beyond the boundary within which a satisfactory remedy is available under the *Act*, and appear more driven by personal mistrust, discourtesy, lack of empathy, eccentricities and a practice by both parties to inflict minor annoyances on the other.

I find that by the present application falling so quickly on the heels of the previous decision, and that by essentially repeating evidence that has been thoroughly and repeatedly examined in previous hearings, I cannot make a finding in favour of the applicant tenants for either monetary compensation or the various orders sought in this application.

Therefore, the application is dismissed without leave to reapply primarily on the grounds of *res judicata* (previously heard), and on the grounds that the landlord's ensuing inspections do not constitute grounds for the sanctions requested.

Having so concluded, I would ask the landlord to be mindful of the apparent conflict between the upper and lower tenants and the duty to monitor that matter and take appropriate action if necessary.

Conclusion

The application is dismissed without leave to reapply.

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 10, 2012.

Residential Tenancy Branch