



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC

Introduction

This hearing dealt with an application by the tenant for monetary compensation and an order that the landlord comply with the Act, regulation or tenancy agreement. The tenant, an agent for the landlord (RM), and two witnesses for the landlord (FP and HP), participated in the teleconference hearing.

At the outset of the hearing, the landlord stated that he did not receive the tenant's first evidence package; however, the landlord did not object to the admission of that evidence and he was prepared to respond to the tenant's evidence with testimony in the hearing. I have reviewed all testimony and other evidence. 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 as claimed?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on April 1, 2007. The rental unit is an apartment in a multi-unit building. Clause 14 of the tenancy agreement indicates that any person residing with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord will be considered an occupant. Clause 22 of the tenancy agreement indicates that a guest of the tenant may park only in designated visitor parking areas, and the landlord may tow any vehicle improperly parked or parked in a manner contrary to the tenancy agreement.

On February 7, 2013 the landlord served the tenant with a notice to end tenancy for cause, alleging that the tenant's guest was unreasonably disturbing another occupant;

specifically, the tenant's guest, MM, was disturbing other occupants of the building, HP and FP, when he parked his truck in the visitor parking. The tenant applied for and successfully cancelled the notice to end tenancy. In the decision dated March 13, 2013, the arbitrator found that the term of the tenancy agreement regarding parking, and specifically visitor parking, did not place limits on the use of parking by a guest and did not allow the landlord to "spontaneously prohibit a visitor from parking in what is known as the visitor's parking area." The arbitrator found that it was not unreasonable for HP and FP, who occupy a unit adjacent to the parking area, to expect to hear the sounds of vehicles starting.

Tenant's Evidence

The tenant stated that the landlord's agent, RM, has been constantly harassing her, particularly in regard to her friend MM. The tenant stated that she is disabled, and MM helps her, picks her up, and sometimes stays over, but he has his own residence and he does not live in the rental unit with her. The tenant stated that on March 19, 2013, RM left her a voice message in which he stated that if the tenant's guest, MM, parked his truck in visitor parking RM would have the truck towed. On March 20, 2013, the landlord served the tenant a letter stating that it had been brought to the landlord's attention that the tenant had a guest who had been staying in her suite on a regular basis for an extended period of time, and the tenant was therefore in breach of her tenancy agreement. The landlord also noted that unauthorized vehicles parked on the property may be removed immediately at the owner's expense. The tenant's further evidence was that RM left another message for her on April 8, 2013, in which he stated that he would have MM's truck towed if it was on the property.

The tenant stated that her friend MM started parking off the property, down the street. However, the landlord's agent, RM, had HP spying on the tenant and MM, and keeping track of how often MM's truck was parked near the building. The tenant stated that HP comes out and starts being confrontational with her or her guest. The tenant stated that she did not report this problem to RM because HP and LP are on the landlord's side.

The tenant stated that because of this harassing behaviour from RM, her health has suffered. She has been unable to eat or sleep, and she is going to the doctor almost every week. She has been prescribed new medication because of her nerves. The tenant submitted a letter from her doctor, in which the doctor noted that the tenant has chronic health conditions which are made worse by the stress she has been suffering for several months due to conflict with RM. The tenant stated that the problems and stress have been going on since February 2012.

The tenant has claimed \$10,000 in monetary compensation and an order that the landlord comply with the Act, regulation or tenancy agreement.

Landlord's Response

The landlord stated that he only contacted the tenant twice, once in writing and once by phone. In the hearing, RM confirmed that he considers the tenant's friend MM to be an occupant, not a visitor, so MM should not be allowed to park in visitor parking. RM stated, "he's an extra occupant, I will tow it [MM's truck]." RM and his witness, HP, confirmed that RM asked HP to keep track of how often MM's truck was parked on the street near the building. RM also stated that he personally witnessed MM staying overnight a couple of times.

The landlord stated that he did not think that the tenant had established any damage or loss based on her evidence, and she was therefore not entitled to monetary compensation.

Analysis

Based on the evidence, including the testimony of RM, I find that RM has been acting in an inappropriate manner toward the tenant and MM, and that he has allowed and even exacerbated conflict between the tenant and other occupants, namely HP and LP. I accept the tenant's statement that RM's persistent inappropriate behaviour toward her has caused her stress and had a negative impact on her health. It appears that RM has chosen to interpret two clauses of the tenancy agreement, those regarding parking and additional occupants, in such a way as to bar MM from parking in visitor parking and to engage in threatening, bullying behaviour toward the tenant. RM appears to have disregarded the March 13, 2013 decision of the director, in which the arbitrator found that the landlord could not "spontaneously prohibit a visitor from parking" in visitor parking. Even if MM were found to be an occupant, nothing in the tenancy agreement or the Act would prohibit an occupant from parking in the visitor parking.

I find that the tenant suffered a loss of quiet enjoyment of her tenancy due to the landlord's behaviour, and she is therefore entitled to monetary compensation. However, the tenant's evidence only shows a clear loss of quiet enjoyment for the months of February through to the date of the hearing, May 7, 2013, and I therefore grant the tenant compensation limited to that time period. As quiet enjoyment is only a portion of what a tenant's rent pays for, I find that it is reasonable to grant the tenant compensation of \$50 per month for four months, for a total award of \$200. The tenant did not specifically apply for aggravated damages, and I therefore cannot grant an

additional amount for her non-pecuniary loss caused by stress and increased health problems.

In the circumstances, I find it appropriate to order the landlord to comply with section 28 of the Act and ensure that the tenant has quiet enjoyment of her rental unit and her tenancy, free from unreasonable disturbance by other occupants or the landlord. I further order the landlord to comply with clause 22 of the tenancy agreement; in particular, I order the landlord to comply with the decision of the director dated March 13, 2013, in which the arbitrator found that clause 22 did not give the landlord authority to spontaneously or arbitrarily prohibit a visitor from parking in visitor parking.

I note that under the Act, a landlord who coerces, threatens, intimidates or harasses a tenant 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, or who fails to comply with a decision or an order made by the director, may be subject to administrative penalties. I caution the landlord to conduct themselves in accordance with the Act.

Conclusion

The tenant is entitled to monetary compensation of \$200, which she may deduct from her next month's rent. The remainder of the tenant's monetary claim is dismissed.

The landlord is ordered, as set out above, to comply with the Act and the tenancy agreement.

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: May 24, 2013

Residential Tenancy Branch