



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application for Orders for the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

In the details of dispute it was clearly indicated that the tenant was seeking monetary compensation from the landlord and I amended the Application to indicate the appropriate dispute codes.

Issue(s) to be Decided

1. Is it necessary to issue Orders for compliance to the landlord?
2. Has the tenant established an entitlement to monetary compensation from the landlord?

Background and Evidence

The tenancy commenced in October 2009 and the tenant currently pays rent of \$610.00 per month. The rental unit is located in an apartment building with 17 units and a common laundry room.

The tenant asserts that the landlord has been negligent in dealing with other tenants who have disturbed her. The tenant is seeking compensation of \$2,000.00 calculated as 40 months x \$50 per month. The action the tenant would like the landlord to take was much less specific and varied throughout the hearing.

The tenant's dispute revolved around the conduct of other tenants who occupy or formerly occupied units #205 and #106. Below, I have summarized each party's

respective position regarding the occupants of these two units and the tenant's complaints.

#205

The tenant submitted that the former occupants, and the guests of this unit, were very loud, especially at night, and smoked marijuana. They occupied the unit between October 2009 and September 2012. The tenant submitted that she wrote several complaint letters to the landlord and he did nothing to address her concerns.

The landlord submitted that he did not receive all of the complaint letters that the tenant submitted as evidence. Rather, the only correspondence the landlord received from the tenant during this time was a complaint about ants and a letter dated January 28, 2012.

I noted that in this letter the tenant complained "noisy/nosy neighbours" without specifying which neighbours or a particular unit.

In an effort to demonstrate that he does respond to concerns raised by tenants in the building, the landlord provided a copy of a letter he had written to the tenant with respect her conduct in the past.

I heard that the tenants of #205 moved out in September 2012 and a new tenant moved in October 1, 2012. It was undisputed that there were issues with the conduct of the young man that moved into #205. The landlord submitted that he met with this young man's Advocate, representatives with the Ministry of children and Family Development, and officials at the young man's high school in an attempt to manage his behaviour. Alternative housing was found for the young man and he moved out of the building on March 3, 2013.

#106

The tenant submitted that on April 6 or 7, 2013 the tenant of unit #106 yelled at the tenant while they were in the laundry room and in the presence of the landlord. The tenant asserted that the landlord did not take action to stop the tenant of #106. The tenant acknowledged that she pointed her finger at the other tenant and told her to "shut up". Since that incident the tenant has heard the tenant of unit #106 talking loudly about the tenant as being a "bitch" and a "trouble-maker".

The landlord acknowledged that the tenant of unit #106 yelled at the tenant but claimed that the tenant was also being aggressive and the entire incident lasted approximately 20 seconds. The landlord did speak with both tenants about the incident and the tenant in unit #106 acknowledged the behaviour was inappropriate and was willing to

apologize to the tenant. The landlord suggested the tenant of unit #106 refrain from contacting the tenant.

The tenant requested the tenant of #106 agree, in writing, to have no contact with the tenant. The landlord suggested that both tenants provide such an agreement as the tenant in #106 also expressed concerns about her safety. The tenant was dismissive of this request and was adamant that her conduct does not warrant such an agreement on her part.

When I requested the tenant be specific in her requests for Orders for compliance the tenant's response was that she does not know what she wants. What the tenant was more certain of was that she wants to move and she wants compensation from the landlord.

During discussions with the tenant during the hearing I noted that she completely refused to take any responsibility for her own actions and involvement in precipitating the dispute that took place on April 6 or 7, 2013. I found the tenant readily blamed others for any conflict. For example, the tenant submitted that the incident in the laundry room occurred because a guest was not accompanied by a tenant, which is a building rule that posted by the front door of the building. The landlord responded by suggesting that the tenant refrain from acting as the enforcer of the building rules as this is the landlord's responsibility and there are instances he gives tenants permission to do certain things.

I also found the tenant's own testimony conflicting and contradictory at times. Further, I noted that the tenant repeatedly referred to the tenant in #106 as a male or a man/woman even though that tenant is a transsexual and identifies as a female. I found this behaviour on part of the tenant to be antagonistic.

In contrast, the landlord presented himself as a credible and reasonable person throughout the proceeding.

Analysis

Section 28 of the Act provides tenants with an entitlement to quiet enjoyment. This includes freedom from unreasonable disturbance and use of common areas without significant interference. Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides information with respect to a tenant's right to quiet enjoyment, a landlord's obligation to preserve this right, and examples of what constitutes a loss of quiet enjoyment.

Excerpts from Policy Guideline 6 include the following:

- Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.
- Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
- A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.
- A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, the tenant asserts that the conduct of other occupants has unreasonably disturbed her or significantly interfered with her use of the common areas and that the landlord did not take sufficient action to prevent or stop such behaviour. As the tenant is the applicant, the tenant bears the burden to prove her claims. Thus, It is before me to determine whether the tenant has proven, on the balance of probabilities, that 1) the landlord knew of other tenants unreasonably disturbing the tenant and 2) the landlord failed to take reasonable steps to stop or prevent the disturbances. Further, as with any monetary claim, the tenant must show that she took reasonable action to minimize her loss, as required under section 7 of the Act.

With respect to the former tenants in unit #205 I find the tenant failed to satisfy me that she delivered the complaint letters to the landlord that she included in her evidence package. Although the landlord acknowledged receiving the letter of January 28, 2012 I found this letter non-specific as to the nature of her complaint or the identity of the neighbours she was complaining about.

While I am satisfied the landlord was aware of problems with the young man that moved into unit #205 in October 2012, I am satisfied that he did take reasonable action in an attempt to curb the disturbing behaviour and that he did not sit idly by.

Finally, with respect to the incident involving the tenant in #106 I find the tenant's conflicting testimony and conduct during the hearing leads to me accept the landlord's submission that it was inappropriate, antagonistic, and aggressive behaviour on part of both tenants.

I find the tenant's involvement in the incident involving the tenant of #106 and the tenant's perusal of 40 months of compensation raises considerable doubt as to the tenant's attempts to minimize her losses.

Considering all of the above, I deny the tenant's claim for compensation from the landlord.

As the tenant could not specify the orders she is seeking and the tenant was unwilling to work with the landlord to facilitate a harmonious arrangement between the tenants I do not issue any orders.

In light of the above, the tenant's application is dismissed in its entirety.

Conclusion

The tenant's application is dismissed.

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 31, 2013

Residential Tenancy Branch

