



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNDC PSF RR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order that the landlord protect his reasonable enjoyment pursuant to section 28;
- b) For a monetary order for damage or loss;
- c) An Order that the landlord comply with the Act and Regulations and provide facilities required by law;
- d) An Order to allow the tenant to reduce rent for services or facilities required by law and not provided; and
- e) To recover the filing fee for this application.

SERVICE

The tenant/applicant did not attend. After waiting 10 minutes without his attendance, the conference was closed after hearing from the landlord. The landlord/respondent said they were served with the Notice of Hearing by registered mail on July 12, 2013 and with the Application for Dispute Resolution hearing package by regular mail on July 22, 2013 after they informed the tenant that they had not received it.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord by act or omission has failed to ensure his right to privacy and reasonable enjoyment?

Background and Evidence

Neither the tenant/applicant nor his counsel attended the hearing. After waiting 10 minutes, the hearing proceeded. The landlord was given a limited opportunity to be heard, to present evidence and to make submissions.

The tenant submitted no documentary evidence but the landlord provided 33 pages of documents including the lease, a police report and copies of letters between the parties.

The landlord said that the applicant is a good tenant and has resided in the building since 2003. Apparently he regularly walks his cat outside and the landlord said he had always reported any problems to her such as an unsecured door. She felt he kept an eye on the building which contributed to security.

However, there have been some cars vandalized recently and apparently one of the tenants called the police and the tenant/applicant was questioned by them; no charges were laid. However, the landlord said that the landlord was not involved in this, the landlord has never called the police and has always responded to any complaints of the tenants. The landlord provided a letter from the police showing they had made no complaints and some notices and statements to show how they spoke to tenants about any complaints and tried to maintain good relationships between tenants. From the letters submitted by the landlord, it appears that the applicant/tenant feels that his privacy and peaceful enjoyment have been compromised by a tenant giving his name to the police and by some tenants 'watching him'.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

Protection of tenant's right to quiet enjoyment

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.*

Page 6 of the Residential Tenancy Guideline explains further that "inaction by the landlord which permits or allows ...interference by an outside or external force which is within the landlord's power to control" may be a basis for finding of a breach of quiet enjoyment. Examples of such interference include "unreasonable and ongoing noise".

The onus is on the tenant/applicant to prove on a balance of probabilities that the landlord has through act or neglect failed to protect his right to privacy and peaceful

enjoyment. I find insufficient evidence to support the tenant's allegations. He submitted no documentary evidence and did not attend the hearing to provide oral evidence.

I find the weight of the evidence is that the landlord has not through any act or omission failed to protect the tenant's right to privacy and peaceful enjoyment. The landlord obtained a police report to show him that they had never made any complaint to the police about him or anyone else in the building, a letter from another tenant stated she went to the police with her concerns about the vandalism to the cars but the landlord was not involved, the building manager spoke to tenants that the applicant felt were 'watching' him and making him feel uncomfortable and posted a Notice to all the residents regarding every tenant's entitlement to quiet enjoyment under section 28 of the Act.

I dismiss the application of the tenant.

Conclusion:

The application of the tenant is dismissed in its entirety without leave to reapply. I find him not entitled to recover filing fees for this application.

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: August 15, 2013

Residential Tenancy Branch