



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, OLC, O

Introduction

This was an application by the tenant for compensation due to landlord's failure to provide quiet enjoyment and for the landlord to comply with the Act. The tenant clarified that their primary request is for the landlord to evict a neighbouring tenant for continuing harassment of the applicant.

The landlords and tenants were represented at the hearing. Both parties provided document evidence in this matter and the tenant also provided one witness.

Issue(s) to be Decided

Is the tenant entitled to compensation?

Background and Evidence

The tenant testified the main complaint revolves around a neighbouring tenant (*the neighbour*) in the same residential property. The tenant testified that beginning April 2013 they informed the landlord a purported guest of the neighbour had bothered them. The landlord recalls having a conversation with the tenant but did not receive a written complaint, but instead received a Notice to End tenancy from the tenant, which was later rescinded. The parties agree that in August of 2013 the landlord received a written complaint from the applicant that the neighbour and their guest had rung the applicant tenant's intercom several times at around 1:30 a.m. and were yelling the tenant's name outside of their balcony. The landlord testified that they spoke to the neighbour and issued them a warning letter and concurrently provided the applicant tenant with a response to their complaint. The tenant provided that another guest of the neighbour, a male (DN), was harassing them by uttering rude remarks and being intrusive when in their presence. On one occasion DN uttered a threat to "watch your back", which the tenant took very seriously. The tenant informed the landlord and was told that in

addition for the tenant to call the Police, which they did, but the tenant has been unable to obtain any follow-up information about their involvement. The tenant and the landlord have communicated further about the tenant's concerns about the neighbour and the purported guest and the landlord testified that they continue to investigate the tenant's concerns as they unfold, but that they have limited cause to deal further with the neighbour. In this hearing the tenant informed the landlord that the neighbour is dealing drugs and that as a result the tenant receives ongoing disturbance around the neighbour's customers entering the building in respect to the alleged drug dealing. The landlord testified that this is the first time they have heard this version of problems from the tenant, but will investigate. The landlord further testified that as a result of their communication with the neighbour they are confident that the guests of the neighbour have not resided with the neighbour for some time and that they have no evidence that the neighbour directly has contributing to the tenant's loss of quiet enjoyment. The tenant testified that although DN is no longer staying with the neighbour, they continue to be on the residential property and periodically harass the tenant through their conduct and comments to the tenant – causing the tenant stress. The landlord has determined that someone other than a direct guest of the neighbour may be bothering the tenant.

The tenant presented a witness: MP – a co-resident of the residential property. MP provided sworn testimony that they were a witness to the tenant being threatened by DN in the spring of this year and that DN was at one time a guest of the neighbour; but, however, DN is now a guest of another tenant of the landlord's property in another building and for various periods over the past months has been the guest of other tenants as well. The witness provided that DN even has keys and entry fobs to the property; yet, "*they are homeless*", and simply move about the complex buildings residing with existing tenants. When asked by the landlord, the witness testified that they did not think to ever inform the landlord that DN was moving about the residential complex from tenant to tenant and possibly taking advantage of other residents. To which the landlord responded that they will now investigate these new allegations more rigorously.

Analysis

I find that the testimony of the tenant and the landlord was matter of fact and unembellished – however, I find that the landlord was particularly uninformed about the severity of the issues as presented by the tenant. None the less, I accept the landlord's testimony that they are unable to act decisively if they do not have sufficient evidence to do so, and that despite the tenant's desire to simply have the neighbour evicted as final resolve to their issues they are unable to accommodate such a resolution without evidence that the neighbour is the source of the problem. In this hearing, I find the

tenant and their witness both presented new evidence not previously provided to the landlord which could have impacted on the landlord's ability to deal with the tenant's issues. I accept the landlord's testimony that they have not avoided their obligation to investigate complaints and will investigate the tenant's concerns armed with, now new, information.

Section 28 of the Residential Tenancy Act states:

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;

Policy Guideline #6 dealing with loss of quiet enjoyment, in part, includes the following:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promise(s) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy." Every tenancy agreement contains an implied covenant of quiet enjoyment.

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.

While I accept the tenant's evidence I am not satisfied that the landlord has been provided sufficient evidence to date of the scope of the problem being experienced by the tenant. I further accept the landlord's testimony that they will further investigate the tenant's concerns in light of new evidence. Given the evidence in this hearing I find the tenant has not provided sufficient evidence to prove the landlord failed to take reasonable steps to prevent or avert ongoing detriment to the tenant's right to quiet enjoyment. I therefore **dismiss** the tenants' claims for breach of quiet enjoyment. However, it must be noted that the landlord is now notified of certain problems associated with a purported offender causing a disturbance on the residential property and is obligated to take immediate reasonable steps to remedy the problem. If, following this Decision, the tenant has *new* information that the landlord is not taking

reasonable steps to ensure the tenant's right to quiet enjoyment it may be available to the tenant to file a new application for dispute resolution.

Conclusion

The tenant's application **is dismissed**, with liberty to reapply, as stated.

This Decision is final and binding on both parties.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: November 26, 2013

Residential Tenancy Branch

