



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the agent for the landlord on November 15, 2013.

The tenant applicant was not present at the scheduled start of the hearing. The landlord was put under oath and provided some evidence. A short time later the tenant appeared. The tenant was put under oath and gave evidence. While the tenant was giving evidence the landlord disconnected himself from the conference call. I waited 10 minutes but the landlord failed to re-appear. I proceeded in the absence of the landlord.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order that the landlord take steps to remove from the building a person who lives immediately above the tenant and is constantly breaching the tenant's quiet enjoyment.

Background and Evidence

The tenancy began on May 15, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$375 per month payable on the first day of each month.

The tenant testified that his quiet enjoyment of the rental unit is constantly being interfered with by a person named Jim who is squatting in the rental unit immediately above him. He testified the rental unit is rented to another person who pays the rent but does not live in the rental unit. Jim previously lived in another unit above him and continually harassed him. The tenant testified the landlord evicted Jim. According to the policy of the landlord an evicted tenant cannot return to a building operated by the landlord.

The tenant testified that Jim hammers on the floor (the applicant's ceiling) and swears and threatens him on a daily basis. Jim continually swears at him and verbally abuses him. The applicant testified he saw Jim in April 2013 but has not seen him since. However, he hears his abuse and threats on a daily basis. He further testified that he has told the staff of the landlord of the presence of Jim and his illegal status but they refuse to do anything. He provided the landlord with a written complaint on November 15, 2013.

The representative of the landlord testified that the applicant suffers from schizophrenia and Jim does not exist. The landlord has received 8 or 9 complaints from the applicant. They have checked it out and in each case Jim was not present. The building is secure and has an electronic locking system. There is a building attendant at the front door.

The tenant denies he has schizophrenia but admits suffering from depression.

Analysis

It is very difficult to determine which party to believe. It is particularly difficult as the landlord failed to return to the conference call hearing after he disconnected himself and was not able to respond to the specific allegations of the tenant. However, I determine that it is appropriate that the landlord take sufficient steps to ensure the tenant's quiet enjoyment of the rental unit has not been unreasonably disturbed.

In the circumstances I determined that it was appropriate to make the following orders:

- a. The tenant shall immediately contact the landlord when he has been unreasonably disturbed by someone in the suite above him.
- b. The landlord shall immediately investigate the tenant's complaints.
- c. If it turns out that the person causing the disturbance is a person who has no right to be in the rental unit the landlord shall take steps to have that person removed.
- d. If it turns out that the person causing the disturbance is a person who is the tenant of the rental unit the landlord shall take steps to prevent further disturbances.

The applicant has not made a claim for financial compensation and no such order is made. .

However, if this matter is not resolved the parties are referred to Policy Guideline #6 which includes the possibility of a claim for financial compensation. If the tenant files such a claim both parties are encouraged to attend the hearing for its full duration and to bring witnesses and other evidence so that the testimony of the parties can be corroborated. :

“Claim for damages

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

On application, an arbitrator may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages are those

damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour."

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: January 08, 2014

Residential Tenancy Branch

