



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Robert Phillips dba Philips Mobile Homes Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OLC

Introduction

This was an application by the tenant monetary order for compensation from the landlord as a result of a breach of the Act, in particular the breach of the covenant of quiet enjoyment, for an order that the landlord comply with the Act and for aggravated damages and expenses. Both parties attended the application.

Issue(s) to be Decided

Is the tenant entitled to any compensation?

Background and Evidence

At the outset of the hearing the landlord acknowledged the existence of a Notice to End the Tenancy for Cause dated December 17, 2014 which was the subject of a previous hearing on January 17, 2015. The landlord confirmed that he considered all his concerns which caused him to issue that Notice were satisfied and that he did not intend to enforce it.

The tenant claims herein for compensation totaling \$ 5,667.09 comprised of: lost wages for a friend who helped her throughout the cleanup and preparation of this application, photocopies, colour photos, cancellation fees for a medical appointment, parking fines, impound and towing costs, hydro reconnection fees and aggravated damages. The tenant also asks for an order that the landlord comply with section 22 of the Act: the tenant's right to quiet enjoyment.

At the hearing the tenant confirmed that her claim was occasioned as a result of the landlord's breach of the covenant of quiet enjoyment contained in section 22 of the Act.

Interference with Mail

The tenant testified that her tenancy began in October of 2014. She explained that initially she did not have a mailbox, and that once it was obtained it was painted black and the letter carrier could not find it. She claimed that from around mid May to about June 13, 2014 her mail was not delivered. After that date she painted her mail box bright pink and began receiving mail. The tenant claimed that her mail was diverted to the landlord until June 13, 2014. She testified that he admitted opening one letter from Social Services but she claimed that he also deliberately returned all her other mail so that it was not delivered to her. The tenant claims the letter carrier told her the landlord had done this. The only other supportive proof tendered by the tenant was an internal investigative ticket number from Canada Post. The tenant claimed that as a result of not getting her mail for that time period, her social services assistance for June was discontinued and she therefore could not afford to pay for her hydro which was disconnected. She is therefore claiming loss of her Social Services Income for June amounting to \$ 271.00 (which was not particularized in her application for dispute resolution) and \$ 355.00 representing the hydro reconnection fees.

Cleaning her property

The tenant claims that shortly after moving in, the landlord began complaining to her about the amount of debris on her property. She alleges that he embarked on a campaign of bothering her about this which culminated in giving her a Notice to End the Tenancy for Cause dated December 17, 2014. NK the tenant's friend produced photos of other tenants in the park who had equally or messier lots than the tenant's yet were not bothered by the landlord.

General harassment

The tenant testified that whenever she and her friends were in her yard, the landlord would drive by her house about five minutes after she thought a neighbour telephoned him. She alleged that the landlord would give her "dirty looks." On one occasion he allegedly shook his fist out the car window. The tenant also claimed that in December, when she and friends were cleaning up her yard, he attended there was "mean and nasty" and slandered her by mentioning that she had not paid her rent. She admitted to paying her rent late and forgetting to pay the increased amount. The tenant made a police complaint against the landlord for allegedly shaking his fist at her. NK her friend testified that during the six or so times he was there, about half the time the landlord drove by and gave them "dirty looks."

Towing the tenant's truck

The tenant testified that she had parked her cube truck without licence plates on a public or common roadway in the park. The tenant testified that other tenants do exactly the same thing with impunity. The tenant testified that on or about January 7, 2015 her truck was towed away at the initiation of her landlord in retaliation for her police

complaint against him. Her friend NK testified that he was advised by the towing company that they responded to a complaint by "someone." NK produced photos in support of his submission that other unregistered vehicles are parked illegally in the park and that some were moved to avoid towing on the day that the tow truck came for the tenant's cube truck. The tenant claims she suffered a loss of \$ 174.57 for impound fees and \$ 100.00 in fines as a result of the towing. She claims she missed a doctor's appointment that day because she didn't feel it was safe to leave her other car alone. The cancellation fee was \$ 35.00. She claims the landlord should pay for all these costs

The tenant claims that all of these acts together formed a campaign of harassment which has caused her anguish and fear. The tenant is suffering from a head injury and claims that the landlord's conduct has caused her further anguish and suffering. She produced her medical records and reports where the doctors report her narrative that the landlord's conduct caused or exacerbated her anguish. She claims that she is so fearful of the landlord that she had not been able to sleep in her unit for more than one night since December 2014. In addition to all of the aforementioned claims, she is claiming general damages because of the landlord's conduct which amounts to a breach of the covenant of quiet enjoyment as specified in section 22 of the Act.

The tenant is also claiming for NK's lost wages amounting to \$ 425.00 as he had to take time off work to help her throughout this matter and with this application.

The landlord testified that he had nothing against the tenant personally. Initially he helped her by giving her a mailbox. He admitted to accidentally opening one piece of mail which he apologized for upon redelivery of it to her. He denied tampering with or having any knowledge of what happened to her other mail. He stated that the tenants are responsible for their own mail.

He testified that he was concerned about fire hazards in the park and that was the reason he asked the tenant to clean her yard and remove abandoned vehicles from the common property. He stated there must be a three foot gap between every mobile home in the park. He issued the December 17, 2014 Notice to End the Tenancy because he wanted the tenant to complete the yard cleanup and pay an overdue amount of her rent. That was evidenced in a letter dated December 17, 2014 produced by the landlord. As far as he was concerned after the tenant completed the cleanup and paid the remainder of her rent he had no further disputes with her. The state of the tenant's property is now acceptable to him.

The landlord testified that he was aware that the tenant and other tenants parked their unlicensed vehicles illegally on public roads in the park. He had not done anything about that until one day in January when he received a call from the police advising him that the tenant alleged that he shook his fist at her. He was so angered by this false allegation that he made a complaint about her illegally parked vehicle to the city. He also admitted warning a neighbour so they could move their vehicle, presumably to avoid getting towed.

The landlord testified that the main road out of the park goes by the tenant's lot and he often drives by her unit on his regular errands. He also inspects everyone's property occasionally. He denied making any special trips to view her property or to harass her. He denies having any intention to harass the tenant. He claims that he feels threatened by the tenant when she and her friend come by to pay the rent.

Analysis

Section 22 of the Act states:

Protection of tenant's right to quiet enjoyment

22 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 manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Policy Guidelines are intended to provide a compendious statement of the law, including the common law principles that apply to residential tenancy matters. Policy Guideline 6 states:

The Residential Tenancy Act and Manufactured Home Park Tenancy Act (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- **reasonable privacy**
- **freedom from unreasonable disturbance,**
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from **significant interference**
- The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. **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. **Such interference might include serious examples of:** - **entering the rental premises frequently, or without notice or permission;**

· persecution and intimidation; · refusing the tenant access to parts of the rental premises; · preventing the tenant from having guests without cause; · intentionally removing or restricting services, or failing to pay bills so that services are cut off; · forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, · **allowing the property to fall into disrepair so the tenant cannot safely continue to live there.**

- **Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.**

- **Harassment**

- Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

- **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 Residential Tenancy Policy Guideline number 16 addresses claims in damages. Policy Guideline 16 provides in part as follows:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an arbitrator may award **aggravated damages**. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent. (emphasis added)

The tenant has the burden of proof to prove on the balance of probabilities that all of the losses, damages or other claims were caused more probably than not because of the landlord's wrongful conduct, breach of the Act and in particular breach of her right to quiet enjoyment as defined by the Act and Policy Guidelines aforementioned.

Regarding the redirection of her mail, the tenant adduced hearsay evidence of what the letter carrier was told, in internal investigative ticket number and had no direct evidence of the landlord's interference other than one piece of mail which he admitted mistakenly opening and had returned it to the tenant. It would be dangerous to rely solely on the tenant's suspicion and hearsay evidence. I find that the tenant has failed to establish that the landlord is the one who was responsible for the alleged redirecting of her mail. Therefore I have dismissed all claims flowing from that alleged wrongful conduct.

Regarding the towing, although I find that landlord's motive was ill-conceived, he was acting within his lawful right as a citizen to report an illegally parked vehicle on public property. It was probably not a wise or neighbourly thing to do, but it did not constitute a breach of the tenant's right to quiet enjoyment as defined by the Act and Policy Guidelines aforementioned. The tenant was illegally parked and the landlord merely made a complaint. The costs flowing from that were incurred by the tenant because she chose to risk parking her vehicle unlawfully. Whatever other tenants did or whether they were warned by the landlord is irrelevant. I have therefore dismissed any claims flowing from that event.

I find that the landlord issued a Notice to End the Tenancy on December 17, 2014 as was his lawful right to do so under section 47 of the Act. The tenant failed to show that it was more likely done to harass her.

The tenant and her friend NK's evidence that the landlord deliberately drove by and attended her unit to harass her, is more akin to a suspicion rather than proof of his intent to harass on a balance of probabilities. The sum total of the landlord's alleged

conduct was not of a degree as elaborated in the Policy Guideline 6 that it would constitute a compensable breach of her right to quiet enjoyment. I find that the tenant has failed to establish any loss or claim flowing from the alleged conduct.

The tenant unfortunately, has an injury which makes her predisposed to suffer more from emotional trauma than an ordinary person. However it is the tenant's burden to prove a causal connection between the loss she claims and the acts of the landlord. I have considered all of the evidence and find that the tenant has failed to prove that it was more probable than not that any of the claims she has made result from any individual or the totality of the conduct or any wrongdoing of the landlord. I have therefore dismissed all of her claims for lost wages for her friend, photocopies, colour photos, cancellation fees for a medical appointment, parking fines, impound and towing costs, social assistance, hydro reconnection fees and for general damages. I have dismissed her claim that the landlord comply with the Act.

The tenant also claimed for aggravated damages amounting to \$ 4,428.00. The law as restated in Policy Guideline 16 states that aggravated damages may be granted *in addition* to any *other damages* awarded for the *wrongful conduct* of the landlord. Since I have dismissed all of the tenant's claims and did not find any wrongful conduct of the landlord, I must also dismiss her claim for aggravated damages.

Conclusion

I have dismissed all of the tenant's claims herein without leave to reapply. There will not be any recovery of the filing fee.

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: February 18, 2015

Residential Tenancy Branch

