



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing, with the landlords represented by the named respondent BF. Where I refer to the landlord in the singular form, it is BF to whom I refer.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2014 and ended on July 31, 2014. They further agreed that monthly rent was set at \$825.00 and that the tenant was obligated to secure telephone, internet and cable service at his own expense. The rental unit is a 3 story building which houses 46 units. The building is built motel style, with a long, common balcony running the length of each floor through which the occupants access their individual suites. The tenant lives on the third floor of the building.

The tenant testified that during the 6 months he resided in the building, he was deprived of quiet enjoyment. He testified that each morning except for Sundays between 2-3 a.m., he heard someone walking on the common balcony and it woke him up, preventing him from getting a sound sleep. In early March, he complained to the landlords about the noise and testified that the male landlord, EF, told him it must be a drug dealer and asked him to move out of the rental unit for 10 days so he could set up surveillance. The tenant testified that he told EF that he would not permit EF to set up surveillance from the rental unit. The tenant testified that when he heard that the landlords suspected there may be a drug dealer, he became concerned for his personal safety.

The tenant testified that the next morning when he heard the noise, he turned on a light and the person walking went to the parking and drove away swiftly. He claimed that approximately a half hour later, three people stood in front of his window, two of which he identified as the tenants in the units immediately adjacent to his, and he suspected that the third person was EF. One of the speakers said there was an older woman who came to see the tenant but she did not like the stairs to which another responded, "I will build an elevator so them that they can come in the wheelchair." The tenant testified that he took that as a threat and became increasingly alarmed. At some point in the following days, the tenant learned that the person walking on the balcony in the early hours of the morning was the newspaper delivery person.

The tenant testified that on the night following the aforementioned conversation, the delivery person parked his car in the parking lot and the tenant saw that he had another person with them. He claimed that bright orange lights came on in the car which he believed to be night vision binoculars used to surveil him. He expressed concern because he believed only the army has access to this type of equipment.

The tenant testified that he experienced further issues with surveillance when he discovered in the latter part of April that his neighbour, WC, had a camera attached to WC's window. The tenant testified that originally, the camera was facing the top of the stairs to the balcony used to access the rental unit. He testified that after he complained, the camera angle was changed to point at the parking lot. The tenant's witness, HH, also testified that she saw the camera pointing toward the stairs. The tenant testified that he overheard WC say "I got a picture of him" and believed that the "him" to whom WC referred was the tenant.

The tenant testified that after he complained about the camera, every time he was shopping, on a bus or on the street, people would point at him and insult him. He guessed that these individuals are friends of the landlords, instructed by the landlords to harass him.

The tenant further testified that while he lived in the rental unit, every time he used the telephone he could hear someone lifting up and setting down a receiver which made him believe someone was listening to his telephone conversations. He further testified that his internet service was unreliable and on one occasion, it took 5 hours for an email to reach his inbox. He reported the situation to his service provider which investigated his complaint and told him that the problem was caused by rewiring in the building. The technician advised the tenant to discuss the issue with the landlords as the service provider did not have access to the electrical room.

The tenant also complained about a number of noises to which he was exposed during the tenancy. The first was a grinding noise which he claimed emanated daily from the

suite next door. He testified that the landlord told him that the cable lines caused the noise. The second noise of which the tenant complained was the loud sound of birds and street noises. The tenant claimed that these sounds were very loud and disturbing and sounded to him like a tape which was played over and over again. He theorized that the landlords must have been playing the tape because on one occasion when they left for 3 days, the sounds stopped, only to resume when the landlords returned.

The landlord testified that EF at no time told the tenant that a drug dealer was suspected of walking on the balcony. She testified that when the tenant approached her about the issue, she told him that it was the newspaper delivery person. She testified that in order to reach WC's door, the person who subscribed to the paper, the delivery person had no choice but to walk past the tenant's door. The landlord testified that she would have explored other options for delivery, but the tenant told her not to speak with WC because he feared reprisal. The landlords provided a letter from WC in which he confirmed that he subscribed to the newspaper and that in the "odd time" when he has been awake at the time of delivery, he noted that the delivery person made very little noise.

The landlord testified that the camera has been in place at WC's window for 3 years and was placed there because his vehicle had been vandalized. When the vandalism occurred, WC placed a sticker on his window which read, "Smile, you're on candid camera" and placed the camera in the window to deter would be vandals. She testified that WC had told her that the camera was inoperative and had never recorded images. The landlords provided a letter from WC in which he confirmed that he had mounted the camera for this purpose and that the camera was trained at his parking spot.

The landlord testified that the tenants have their choice of service providers for telephone, internet and cable. The control box for one service provider is located in the electrical room and when that service provider requires access, the landlord will grant access. The service provider for the tenant keeps their control box on the outside of the building and does not need to access the electrical room, so this provider is not granted access to that room. The landlord testified that other tenants who use this service provider have not reported problems and she testified that there has been no re-wiring done which would have affected the tenant's reception.

The landlord denied that she is playing a tape with bird and street noises. She testified that the residential property is close to a wooded area which has a lot of bird activity and guessed that the tenant was hearing natural sounds.

Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. In order to establish his claim, he must prove that the landlord has breached the Act, Regulations or tenancy agreement. The tenant chose to live in a building in which the units may only be accessed by a common balcony. I find insufficient evidence to show that the noise created by the delivery person is unreasonably loud. The tenant acknowledged that the person is simply walking on the balcony at an early hour. This type of noise is to be expected in an apartment building offering this type of access. I do not accept that the landlords told the tenant that a drug dealer was walking on the balcony or that they asked to use his apartment to conduct surveillance. This story is too farfetched to be credible and I find there would be no motivation for the landlords to frighten tenants into believing that there is illegal activity taking place in the building. If EF was involved in the alleged conversation referencing a wheelchair, and there is insufficient evidence to show that he was, I am not satisfied that reference to a wheelchair constitutes a threat. I find that the conversation does not have any sinister tone whatsoever. I am not satisfied that the delivery person was watching the rental unit through night vision binoculars, but even if he was, I find this to be outside the control of the landlords as it only occurred on one occasion and apparently was not reported. I find insufficient evidence to show that the landlord has breached the Act, Regulations or tenancy agreement.

The tenant acknowledged that the camera which is the source of one of his complaints is now pointing toward the parking lot. The tenant provided photographs showing the camera pointing at the parking lot but did not provide photographs showing the camera pointing in any other direction. Even if the camera had been pointing at the top of the stairs, it is a common area and I am not satisfied that the tenant has a reasonable expectation of privacy in a common area. If the tenant accurately overheard WC speak of getting a picture of "him", there is no supporting evidence to show that the "him" to whom WC referred is the tenant. I find insufficient evidence to show that the landlord has breached the Act, Regulations or tenancy agreement in this regard.

The tenant provided insufficient evidence to show that the landlords were in any way interfering with his telephone and internet reception. A statement from the service provider was not entered into evidence and as there is no evidence that the tenant is an expert in this type of service delivery, I do not give any weight to his theory that his connectivity problems were in any way caused by the landlords. I find that the landlords have not breached the Act, Regulations or tenancy agreement with respect to service delivery.

The tenant has produced no evidence to corroborate his claim that grinding noises were emanating from the adjacent suite or that these noises occurred so frequently that it would interfere with his quiet enjoyment of the unit. Although both the tenant and his

witness, HH, testified that they believed that the street and bird noises came from a CD played by the landlord, it appears neither considered the possibility that these noises might come from birds and vehicles. I cannot imagine why the landlords would continuously play these types of noises at all, much less at a volume which would disrupt others. If this were occurring, one would expect that other occupants of the building would complain, but there is no evidence of other complainants. I am not persuaded that the landlord was purposely playing loud noises and I find that the landlords have not breached the Act, Regulations or tenancy agreement.

The tenant has not proven that the landlords are in breach of their obligations and therefore the tenant's claim must fail.

Conclusion

The claim 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: April 30, 2015

Residential Tenancy Branch