



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.U.C.C.E.S.S. AFFORDABLE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement, pursuant to section 62.

The landlord's agent, CK ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the senior housing manager for the landlord company SAHS, named in this application ("landlord company") and that he had authority to represent the landlord company as an agent at this hearing. The tenant's witness, "witness HG," testified at this hearing and both parties were given an opportunity to ask questions and to cross-examine the witness.

The landlord confirmed personal receipt of the tenant's application for dispute resolution hearing package ("Application") on March 27, 2015. In accordance with section 89 of the Act, I find that the landlord was duly served with the tenant's Application.

The tenant confirmed personal receipt of the landlord's written evidence package on April 10, 2015. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlord's written evidence package.

During the hearing, the tenant requested to amend his Application to correct the name of the landlord company. The landlord consented to the tenant's amendment request on behalf of the landlord company. In accordance with section 64(3)(c) of the Act, I

amend the tenant's Application to correct the name of the landlord company, which is now correctly reflected in the style of cause on the front page of this decision.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this tenancy began on April 1, 2011. Monthly rent in the amount of \$320.00 is payable on the first day of each month. A security deposit was paid by the tenant, although both parties could not recall the amount of such deposit. The tenant testified that he will be vacating the rental unit on April 30, 2015. The landlord testified that the landlord company assumed control and management of this building from the former landlord in December 2013. The landlord confirmed that the tenant's tenancy was transferred to the current landlord company at that time.

The tenant testified that he is seeking an order for the landlord to provide him with records about another tenant, "P," who is residing in the same rental building. The tenant stated that he requires the landlord's records regarding P in order to prove that P perjured himself, committed fraud, made false 911 calls about the tenant when the tenant was not present or committing any crimes, and to prove the tenant's innocence. The landlord testified that he cannot produce any records to the tenant regarding P, under the freedom of information and protection of privacy laws. The landlord stated that he would require a court order to produce any records regarding P, as the tenant is asking for documents unrelated to tenancy matters but rather dealing with criminal and court matters.

The tenant testified that he is seeking a monetary order for compensation in the amount of \$25,000.00 for a loss of quiet enjoyment, a threat to his safety, and verbal and physical altercations with P, while the tenant was residing in the rental unit.

The tenant stated that the problems with P began around May 17, 2012, prior to the current landlord assuming control of the rental building. The tenant indicated that he has been involved in physical and verbal altercations with P. The tenant maintained that other tenants in the rental building have complained about P hurting them and

causing them problems. The tenant explained that his rental unit is in close proximity to P's and that he has been scared to leave his rental unit because of P. The tenant stated that he has been a victim of P's destructive behavior but that the tenant himself has wrongly received warnings from the landlord regarding eviction because of P.

The tenant stated that he was physically assaulted and almost killed by P in the elevator on August 12, 2012. The tenant indicated that he suffered a heart attack after this "elevator incident," as he was punched in the chest. The tenant stated that he was hospitalized after this incident and that it was reported to the police. The tenant testified that the hospital found that his heart attack was caused by adrenaline. The tenant confirmed that he had a heart condition and previous heart attacks which were remedied by stent implants. The tenant's witness HG testified that the tenant resided with her in her unit, in the same rental building, after the hospital visit. Witness HG confirmed that the tenant's health has deteriorated since this elevator incident and that the tenant has been more anxious and fearful after the incident. Witness HG testified that the tenant does not go into the elevator with P anymore and that witness HG would not feel safe being in the elevator with P, either. Witness HG confirmed that the tenant was not aggressive towards P. Witness HG stated that the police found the elevator incident to be a consensual fight but she believes that the tenant was assaulted by P. The landlord provided police notes from August 13, 2012, which indicate that the tenant and P engaged in a consensual fight and both received minor injuries. The landlord also provided a letter, dated August 13, 2012, from the former landlord to the tenant, indicating that the elevator incident was "reprehensible," that an "unbiased stand" was being taken on the incident and that the tenant could be evicted if such activity continued, as it affects the quiet enjoyment of other tenants. Witness HG indicated that the tenant is now relieved to be living away from the rental unit in his new place, away from P.

The tenant indicated that although the problems with P began before the landlord company assumed management of the rental building, the issues have continued and he has reported these problems to the landlord company. The tenant stated that P should have been checked out more thoroughly before being approved to reside at the rental building as a tenant. The tenant further indicated that after he reported continuous problems with P to the landlord company, that P should have been moved to another rental building managed by the landlord company, away from the tenant and other tenants who have complained about P.

The tenant stated that he is now leaving the rental building and moving to a different location because of P. The tenant provided a copy of a letter he sent to the landlord, dated March 27, 2015, indicating that he is vacating the rental unit due to P's behavior.

The tenant stated that he did not want to move from the rental unit, as he likes the place, but that he has no choice because of P. The tenant stated that he had to go through the entire process of finding another unit and that his rent has now substantially increased to \$1,150.00 per month, which he began paying as of April 1, 2015, when he moved into the new unit. The tenant stated that he still has belongings in the rental unit, which he will remove by April 30, 2015. The tenant indicated that he was unable to find another place with a similar rent to the \$320.00 rent at the rental unit.

The landlord testified that the majority of incidents between P and the tenant took place before the landlord company took over management of the rental building. The landlord stated that the landlord company is not accountable for these previous incidents. The landlord agreed that while the previous landlord acted in a different manner regarding P, the tenant should be pursuing relief against the former landlord, not the current landlord company.

The landlord stated that the issues between P and the tenant restarted in June 2014. The landlord testified that the issues between P and the tenant are civil matters between two adult individuals and unrelated to the landlord and this tenancy. The landlord indicated that both the tenant and P have a longstanding history of conflict with each other and that due to this fact, the landlord has repeatedly advised the tenant to approach the police and register any complaints when problems arise. The landlord indicated that the police have asked the landlord company for video evidence from the rental building regarding interactions between P and the tenant. The landlord explained that when the evidence is produced, the police find that there is no substantive proof of any crimes or illegal activity, they close their files and do not take any further action. The landlord stated that he has seen video evidence of interactions between P and the tenant, which simply show both individuals passing by each other with no contact.

The landlord testified that any incidents between P and the tenant are unprovable, as both parties usually provide different versions of the incidents with an equal number of witnesses on both sides, supporting each version. The landlord indicated that both P and the tenant feel unsafe in their own homes. The landlord stated that P was willing to have the issues between the two tenants resolved through mediation and that P was willing to sign a resident civility agreement with the tenant. The landlord provided a copy of this agreement and indicated that it was drafted by a mediator/facilitator with whom the landlord had a contract. The landlord indicated that the agreement was designed to encourage both parties to respect boundaries and limitations on what is acceptable behavior on the property and to minimize contact with those with whom the tenant had issues, including P. The landlord stated that the tenant was not willing to sign the agreement or participate in a mediation with P. The landlord indicated that the

landlord company provides housing for people that are hard to house and that he cannot evict P if he is a bad person or has a previous criminal history. The landlord indicated that the tenant made the right decision to leave the rental building.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notes and police documents, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

I dismiss the tenant's application for an order for the landlord to provide him with records about P. I find that the tenant is attempting to obtain documents regarding court matters unrelated to this tenancy. I find that these documents may be subject to the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") and that the tenant's application in this regard extends beyond my jurisdiction under the Residential Tenancy Act.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this situation, the tenant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused him a loss, which affected his right to quiet enjoyment.

To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the loss exists;
2. Proof that the loss occurred due to the actions or neglect of the landlord in violation of the *Act*, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss being claimed.

Section 28 of the *Act* deals with the 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.*

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*.

The tenant provided approximately 66 pages of handwritten statements regarding various court and police actions involving P, the tenant and other unrelated third parties. The tenant did not refer to these statements during the hearing. I did not find these statements to be relevant to this hearing or of any assistance in my decision.

I find that the elevator incident and many of the incidents between the tenant and P, as per both parties' testimony, occurred before the current landlord company assumed control of the rental building and this tenancy. Therefore, the landlord company is not responsible for the events that took place from approximately April 1, 2011 to December 2013, including the elevator incident.

Regarding the incidents that have taken place since approximately December 2013, I find that the landlord took reasonable steps to address the tenant's complaints about P. The landlord attempted to mediate the matter between P and the tenant, but the tenant refused to participate. The tenant also refused to sign a resident civility agreement. The landlord advised the tenant to report the incidents with P to the police and let them handle the issues, due to the longstanding history between the two, including physical and verbal assaults and threats. Many of these incidents involve potential illegal and criminal activity, unrelated to residential tenancy matters, which are beyond the landlord's control and beyond the scope of the *Residential Tenancy Act*. The landlord indicated that the result of these police investigations was that the files were closed because no allegations could be substantiated.

On a balance of probabilities, I find that the tenant has not met his burden of proof to show that the landlord caused him loss which affected his right to quiet enjoyment, and that the landlord failed to take appropriate action to follow up on the tenant's complaints about P. I find that the landlord took appropriate action to address the tenant's complaints within its ability to deal with residential tenancy matters that could be viewed as falling within the landlord's responsibility established under the *Act*. The landlord has no responsibility to assist the tenant in pursuing civil or criminal action against P. I find that the tenant did not attempt to mitigate his loss by participating in mediation or the signing of an agreement, offered by the landlord. The tenant was also unable to demonstrate the monetary basis for the \$25,000.00 amount that he claims for this loss. The tenant did not provide any medical, wage loss or other documents to indicate that he suffered a monetary loss. Therefore, I dismiss the tenant's application for a monetary order for money owed or for compensation for damage or loss under the *Act*, regulation or tenancy agreement, without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: May 05, 2015

Residential Tenancy Branch