



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDC, OLC

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy, an order compelling the landlord to comply with the Act and tenancy agreement and a monetary order. Both parties participated in the conference call hearing.

At the hearing, the parties agreed to settle the issue of the end of the tenancy. The hearing therefore focused on the tenant's claim for a monetary order.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to comply with the Act and tenancy agreement?

Background and Evidence

The subject rental unit is a basement suite in a home in which the upper floor is occupied by the landlord and his family. The tenant seeks an order returning half of one month's rent, testifying that after having served the landlord with documents advising that he was disputing a notice to end tenancy, the landlord's family made an excessive amount of noise and caused him to lose quiet enjoyment of the rental unit. The tenant testified that he can constantly hear children jumping, bouncing heavy things on the floor and stomping their feet. He stated that he has repeatedly asked the landlord to stop the excessive noise, but to no avail. He stated that in order to listen to his television, he has to turn the volume excessively high.

2 witnesses testified at the hearing at the tenant's request. The first witness, KB, testified that she has been in the rental unit 3-4 times and each time, she can hear the children yelling from across the street and emphatically stated that no one should have to tolerate that noise level. The second witness, LM, testified that she has been in the

home approximately three times for as long as 15 minutes each time and can hear the children jumping constantly and causing the lights in the rental unit and pictures on the tenant's wall to shake.

The landlord's wife, SS, testified that her children are 8 and 3 years old and initially stated that they are in school all day and therefore cannot be causing noise. When specifically asked how long her 3 year old child attended school each day, she said he was away for 1-2 hours per day. SS stated that because her children were not born in Canada, they are in her control and do not make excessive noise. She denied that they have ever jumped in the house and stated that by the time they return from school, they are too tired to make noise. SS alleged that the tenant's witnesses were paid to give their testimony.

The tenant also testified that the landlord has disconnected his wireless internet access and his cable television. The landlord denied having discontinued providing these services. The tenant further alleged that the landlord had sent back mail addressed to him with the notation that the tenant did not reside at the address. The landlord denied having returned mail. The tenant seeks an order compelling the landlord to comply with the Act and tenancy agreement.

Analysis

At the hearing, the parties agreed that the tenancy would end on July 31, 2015 and that the landlord was entitled to an order of possession effective on that date. I therefore grant the landlord an order of possession. This order must be served on the tenant. If the tenant fails to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 28 of the Act provides that tenants have a right to quiet enjoyment which includes freedom from unreasonable disturbance. The landlord has an obligation to provide the tenant with quiet enjoyment. I find on the balance of probabilities that the

landlord has failed to provide the tenant with quiet enjoyment. I have arrived at this conclusion for a number of reasons. The tenant and 2 witnesses testified that the noise coming from the landlord's living area is unreasonably loud. I do not accept the landlord's contention that the tenant's witnesses were paid to give their testimony as there is no evidence to corroborate this claim. The landlord's wife initially claimed that her children were away at school all day when this is not the case. I do not accept her argument that because her children were raised with different cultural values, they do not make noise and I do not accept her argument that her children arrive home from school each day too tired to make noise. I find it more likely that her children are normal, active children who require supervision and reminders to maintain a reasonable noise level and I find that as considerable animosity has grown between the parties, the landlord and his wife are not motivated to keep their children quiet because they do not care whether he is disturbed. I find the testimony of the tenant and his witnesses to be more believable than that of the landlord and his wife. I therefore find that the landlord has failed to comply with the Act in that he failed to provide the tenant with quiet enjoyment for the months of May and June.

The tenant is paying \$625.00 per month for a rental unit which includes quiet enjoyment. I find that the landlord has failed to provide that quiet enjoyment and therefore find that the tenant has paid for a service he is not receiving. I find that the tenant has suffered a compensable loss and is entitled to recover part of his rent.

It is not possible to arrive at a precise calculation of what the tenant has lost and I therefore find it appropriate to award him an amount which I find reasonable. I find that an award of 25% of the rent paid for each of the months of May and June will adequately compensate the tenant and I award him \$312.50 which represents \$156.25 for each of those months. The tenant may deduct \$312.50 from the rent payable for July.

The tenant provided no evidence to support his claim that the landlord is failing to provide television and cable service and that the landlord is arranging to have his mail returned. However, the only claim the tenant made in this regard is for an order compelling the landlord to comply with the Act and tenancy. I find it appropriate to issue this order as a reminder to the landlord that they are obligated to comply with the Act and tenancy agreement throughout the tenancy. I order the landlord to continue providing uninterrupted wireless internet and cable television services and to provide the tenant with his mail.

Conclusion

The tenancy will end on July 31, 2015 and the landlord is ordered to continue providing uninterrupted wireless internet and cable television services and to provide the tenant with his mail.

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: June 22, 2015

Residential Tenancy Branch

