Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) To obtain compensation for loss of peaceful enjoyment contrary to sections 28, illegal entry contrary to section 29, loss of vital services and harassment; and
b) For aggravated damages due to the severity of the problems and the failure of the landlord to investigate and correct the disturbance and for disclosure of her personal information.

Service:
The tenant /applicant gave evidence that she served the Application for Dispute Resolution by registered mail and the landlord agreed she received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:
Has the tenant proved on the balance of probabilities that her landlord's neglect or actions caused her peaceful enjoyment to be significantly disturbed, that she was subject to illegal entry and harassment and the landlord neglected to address the problem and also disclosed her personal information without consent? If so, to how much compensation has she proved entitlement?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy was a one month sublet, commencing on February 1, 2013 and ending on February 28, 2013. The tenant filed her Application on February 27, 2015 which is one day within the two year limitation period according to section 60(1) which states it must be **filed** within two years. I find she filed the Application in time.

The tenant agreed she signed a tenancy agreement with the landlord and roofing work was mentioned in it but she did not recall getting a copy of the agreement. It was undisputed that rent was $1050 for the month and a security deposit of $525 was paid and refunded by the landlord.

The tenant claims $3550 in compensation. She states her quiet enjoyment and peaceful occupation of the premises was breached by roof construction and false advertising. She claims a refund of her rent in the amount of $1050. The remainder of her claim is for aggravated damages, that are for mental distress, discomfort, humiliation, inconvenience and for unlawful entry, harassment, shutting off vital services of electricity and cable and disclosing personal information without her consent and failure to adequately or fairly investigate her complaints of disturbance and harassment.

The landlord sublet her unit for one month while she travelled so much of the communication was done by email and the tenant has provided emails in evidence as well as photographs. The landlord provided a copy of the tenancy agreement and the co-owner who lives in the same home and is the head landlord attended as witness. In the Sublet tenancy agreement, the parties acknowledge that the tenant has been notified that the landlord intends to do work on the roof during her stay and a co-owner's email is quoted stating work would begin on "February 4, weather permitting and should last about 5 days (Again this depends on the weather). The crew will be working from about 8 a.m. to 5 p.m. on those days they can work. After the roof-the following week?-another small crew will arrive to replace the gutters. This should be a quick 1 or 2 day job".

The tenant said the roof work lasted 3 weeks and was significantly disturbing with banging, shaking, and loss of privacy with ladders up by the windows and no curtains. She said it was not what she expected and may have been okay if it had only been 3 days or so. The landlord said she gave the tenant a $100 rent discount plus allowed her to move in 3 days early at no charge as they both thoroughly discussed the roof work and put it into the tenancy agreement and she felt that discount was fair. The tenant said she was short of funds after coming home from abroad and she negotiated the rent reduction and just asked to move in early and neither was related to the roof work. The landlord said it is not logical that she would give reductions and a grant to someone she did not know and it was based on the fact that there would be roof work. She also said there were blinds that could be lowered for privacy; the tenant said they made the unit too dark for her. She said she was forced to leave the unit often during the day as the noise was too disturbing. She provided photographs showing significant roof work being done with the resulting mess around the home.

The landlord's witness who was present during the roof work said it took 4 full days and 3 part days, the first day the crew had to tarp the house and finished about 2:40 p.m. He explained it was a heritage style home with a very steep roof line where the roofers could not work in rain. He said they worked half a day on a Saturday and half a day on the final Tuesday. He acknowledged there was noise and disruption but understood that the landlord when she sublet had included these conditions in her agreement with her tenant. Emails on February 4, 2013 show the roof work started and on February 5, 2013 are complaints from the tenant to the landlord about the noise and the co-owner telling her it would last about 4-5 days and "It's loud" and "It's a good day to go see a movie". On February 8, 2013, the tenant emails that it is after 5 p.m. and the banging continues and the co-owner said that she should complain to her landlord

as he is not her landlord and ask for any rent back from her. The witness explained in the hearing that he would expect to be contacted as agent if there was a house issue of safety or maintenance but did not want to be contacted with demands for rent refunds as he did not collect rent from her.

The tenant documents by email on February 8, 2013 that she will be asking for a good portion of rent back from the landlord and asks for $500 back. An email from the landlord on Saturday February 9, 2013 says she has contacted a co-owner and the bulk of the roof work is completed as stated in their agreement and there is just a little more. The tenant complains about windows in the common areas being boarded up and her entrance being blocked for a few days. On February 11, 2013, the tenant again emailed the landlord with her problems and notes that no efforts were made to lessen the disturbance despite 'multiple attempts to contact you and your landlord' [the co-owner who is a witness in the hearing] although it devalued her tenancy. She notes she is not comfortable with the fact the landlord is unreachable in case of an emergency and she has noticed a couple of times that the apartment smells like gas when she enters it. The landlord responded that on February 12, 2013 to make suggestions regarding the gas, the pilot light and to contact the owner landlords who will investigate and have it fixed.

The aggravated damage claim for $2500 was due to two particular incidents. On February 14, 2013, the co-owner knocked loudly on her door while she was sleeping in the middle of the day, she told him to come back later but instead he called the Police and she came out of the shower to find a Policeman in her unit followed by a number of firefighters who lit her pilot light and left. She felt embarrassed and humiliated.

The witness co-owner said that the tenant had been sending emails to her landlord saying she smelled gas but she would not respond to them (the co-owners knocking on her door). He said they smelt gas outside her door and sent an email at 9:30a.m.and phoned twice but she did not respond although he could hear her walking inside. He phoned her again at 11 a.m. with no answer, then he knocked and called at the door about a possible gas leak but she did not respond. He called the Police non emergency line and they sent two Police and firefighters. They called and identified themselves at her door but she only screamed through the door she was naked in the shower; they could smell gas. He said she finally let them in and they relit a pilot light and left. He said there were about 3 days of smelling gas under the door. The tenant said this was not accurate, the co-owner had opened her door with a key. Furthermore, she said her emails meant she could smell gas when she entered the house, not her unit; she said the pilot was not out for 3 days.

In respect to the electric, cable shut off, she said on February 17 or 18, the landlord shut off the electricity. She said she fell asleep about midnight and was unsure whether it was the television or stereo she left playing. She said it was cold when she woke up in the early morning and had sent an email about this. The co-owner said the tenant was upset with them about the gas leak and roof and started to put on her stereo full blast in the afternoon and then leave the house. At midnight on the night in question, it was blaring at midnight keeping the other residents awake

and she ignored their knocks. The Police were called at 3 a.m., they knocked and loudly identified who they were but she refused to answer so they suggested he turn off that one circuit for the night at 3:30a.m. to stop the noise and disturbance to the other residents; he realized this was wrong but could see no other solution. However, he said there are baseboard heaters on separate circuits and only one circuit for the stereo and lights was turned off and turned back on at 7:30 a.m. the next morning by the other co-owner. The tenant said she was unaware the Police had arrived or she would have answered and the stereo was not full blast and this is irrelevant anyway. She said she never heard the Police knocking, maybe she was too deeply asleep. Maybe the noise was too much for the house but it was not intentional. The landlord said the cable affects the whole house and it was not cut off on February 27, 2015 as the tenant alleges.

Regarding disclosure of her personal information, the tenant said this claim is based on the fact that her landlord was forwarding her emails to the co-owner without her permission. The landlord said the tenant had so many concerns and problems that were connected to the house that she tried to forward the problems in the tenant's own words so the co-owner could address them as he has the responsibility for the maintenance of the whole home. The co-owner witness said the tenant had been talking about compensation constantly during the roofing process and he told her that was between her and her landlord but he would deal with building issues as he was ultimately responsible for that. The tenant said it was hard to communicate with her landlord as she was travelling, she said the co-owner bothered her from the start, for example, his roofing comment and then the February 14, 2013 gas incident shows he is a control freak.

The landlord requested the tenant leave the conference at the end so she could disclose her new address privately so this was done as requested.

Included with the evidence is the advertisement to sublet, the tenancy agreement, many emails, and photographs. All of the evidence was considered although not all is referenced in the Decision.

Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 28 of the Act provides that a tenant has a right to reasonable privacy and freedom from unreasonable disturbance. The tenant as applicant has the onus of proving on a balance of probabilities that the landlord through act or neglect failed to protect her privacy and reasonable enjoyment and she is entitled to compensation. I find as fact the tenant moved into the unit on January 29, 2013 and work on the roof began on February 4, 2013 and lasted 4 full days and 3 part days due to rainy weather which slowed down the job as the steep roof could not be worked on safely in wet weather. The tenant and landlord agreed that the noise was disruptive but the landlord said she had not violated the tenancy agreement as she had discussed the work thoroughly and even had the information written in the very brief tenancy agreement. I find as fact that the tenant was granted 3 days free rent (Jan.29, 30, 31) and a $100 discount and the landlord said this was to compensate her for disruption that might occur. Although the tenant contended that this discount and free rent was a gift to her and due to her negotiation, I find the landlord's evidence more credible that there would be no motive for her to give discounts to a stranger but rather it was based on a discount for disruption. I find the tenancy agreement supports the landlord's credibility as it specifically provides that she(the subletting landlord) was notified that work was to be done on the roof starting February 4, 2013 and should last about 5 days depending on weather and another crew would then arrive to replace gutters. I find the weight of the evidence is that although the roof work was noisy and disruptive, the landlord did not violate the Act or tenancy agreement as the tenant was notified clearly before signing the tenancy agreement, she was granted some compensation and the work did not last much longer than quoted (about half a day longer). I find she hasn't proved that the landlord through act or neglect failed to protect her quiet enjoyment. I dismiss this portion of her claim.

In respect to her claim for aggravated damages of $2500 for illegal entry and harassment and shutting off vital services of electricity and cable, I find section 29 of the Act states that a landlord must give the tenant at least 24 hours written notice of entry *unless section 29(1) (f) an emergency exists and the entry is necessary to protect life or property.* I find as fact that the tenant had been complaining of a gas smell by email to her landlord who was travelling. Her landlord, being concerned, informed the co-owner of the house who was her landlord. Although the tenant contended in the hearing that she only emailed that she could smell gas when she entered the **house**, I find as fact that her email dated February 11, 2013 states "I have noticed a couple of times that the **apartment** smells like gas when I enter it…I am not willing to put my safety at risk" and goes on to say she will end her tenancy early. On February 14, 2013, I find as fact that the co-owner tried to contact the tenant regarding the gas smell. He smelt gas coming from under her door and emailed her at 9:30a.m. and telephoned twice and again at 11 a.m. when he heard her walking around and then knocked loudly on her door to tell her of the emergency regarding a gas leak. When she did not respond, I find the weight of the evidence is that he called the Police who attended with some firefighters who knocked loudly but she did not respond. I find as fact that they entered the unit with or without her help because they firmly believed it was an emergency as they could smell gas also. Whether or not she was in the shower and did not hear them, I find this entry qualified as an emergency entry, especially in light of her emails to the landlord expressing alarm for her safety due to the gas smell. As the entry was not illegal but a justified emergency, I find her not entitled to compensation.

In respect to the cutting off of electricity and cable, I find as fact that the landlord did cut one circuit for a short time one night because she was playing a stereo or TV very loudly at midnight and disturbing other residents. I find as fact that the landlord telephoned the Police and when she would not respond to them at 3 a.m. after they had identified themselves, the Police advised the landlord to cut the power to the source of the noise to protect the peaceful enjoyment of other residents in the building. Although the landlord is not to cut services if they are essential to a tenant's use of the facilities as living accommodation, I find the landlord by turning off one circuit did not terminate an essential service. I find the landlord's evidence credible that this one circuit only controlled the stereo or TV source and lights and was only off from 3:30a.m. to 7:30a.m. when the co-owner turned it back on. I find the landlord's evidence credible that there are three circuits for three baseboard heaters so heat remained and lights and TV or stereo was only off for 4 hours in the middle of the night. I find the tenant did admit that her stereo or TV was perhaps loud and the fact that she could not hear the Police knocking and calling (although it was heard by the whole house) supports the landlord's testimony and credibility that she was seriously disturbing the peaceful enjoyment of other tenants in the building and he had a duty to protect them also. I find her not entitled to compensation for termination of essential services.

In respect to her claim for compensation for disclosure of personal information, I find this was based on the landlord forwarding her emails of complaints to the co-owner of the house. I find the weight of the evidence is that she was demanding rebates of rent as early as February 8, 2013 and the co-owner told her that compensation was between her and the landlord but he would deal with property problems. I find most of her emails dealt with issues regarding the length of time for roof repairs, accusations that the landlord was not dealing with her noise complaints on roofing or lack of privacy and as the co-owner was the agent for the travelling landlord, I find the emails were not dealing with personal or confidential matters but with property issues of which the agent had to be informed. I dismiss this portion of her claim.

I find her accusations of harassment by the agent relate mainly to the issue caused by the gas emergency when she accuses the agent of harassing her by knocking loudly on her door and summoning the Police. When queried in the hearing, she said this charge of harassment related to the February 14th incident and the fact he bothered her earlier with the comment that roofing was noisy and it might be a good day for a movie. As I earlier stated, I find as fact the February 14th incident was a genuine emergency and the landlord was acting in concern for the tenant's health and safety. Harassment is defined in the Dictionary of Canadian Law and set out in Policy Guideline 6 as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". There are other definitions but all reflect the element of ongoing or repeated activity by the harasser. I find the neither the landlord's actions nor his comment that roofing was noisy and it might be a good day for a movie would be defined as harassment; neither of the quoted incidents was ongoing or repeated conduct but single reactions to specific incidents. I dismiss this portion of her claim.

Conclusion:

I dismiss the tenant's application in its entirety without leave to reapply. No filing fee was involved.

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 23, 2015

Residential Tenancy Branch