Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on March 11, 2015. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

The tenant produced 5 discs of digital evidence which covered over 5 hours of video recording. The discs relate to cameras the tenant has trained on her rental unit and surroundings and photos of when they are triggered. However, the tenant failed to provide the printed description which is required under Rule 3.10 of the Rules of Procedure. The Digital Evidence Information sheet provided by the tenant dated March 11, 2015 fails to satisfy the requirements of Rule 3.10. Rule 3.10 to 3.12 provide as follows:

Rules 3.10 of the Rules of Procedure provides as follows:

3.10 Digital evidence

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

Digital evidence must be accompanied by a printed description, including:

- a table of contents
- identification of photographs, such as a logical number system
- a statement for each digital file describing its contents
- a time code for the key point in each audio or video recording, and
- a statement as to the significance of each digital file.

To ensure a fair, efficient and effective process, identical digital evidence and the accompanying printed description must be served on each Respondent and submitted to the Residential Tenancy Branch. The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence. If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have 7 days with full access to the evidence. If a party is unable to access the digital Residential Tenancy Branch Rules of Procedure evidence, the Arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible so that the party submitting and serving digital evidence can meet the requirements of Rules 3.14 and 3.15.

The submission and service of digital evidence must meet the time requirements for filing and service established in Rule 3.1, 3.2, 3.14 and Rule 3.15.
Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide the Residential Tenancy Branch with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

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3.11 Unreasonable delay
Evidence must be served and submitted as soon as reasonably possible.
If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

3.12 Willful or recurring failure
An Arbitrator may refuse to accept evidence if the Arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or Order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

This is the precise reason why the Rules of Procedure require that the party provide a printed description of the materials on the disc. The tenant is unable to efficiently show the parts of the

discs which are relevant to her claim. Many of the photos shows pictures of a car at night. I determined the admission of this evidence in its present form would significantly delay the hearing, prejudice the other side and would result in a breach of the principles of natural justice. The Rules of Procedure make it mandatory (Digital Evidence must be accompanied by a printed description…). As a result I determined it was not appropriate to consider the digital evidence presented by the tenant because of the tenant's failure to follow the mandatory Rules of Procedure and resulting denial of the principles of natural justice. The tenants were given a full opportunity to present the evidence in their oral testimony.

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
b. Whether the tenant is entitled to an order that the landlord evict the tenants in the adjoining side of the duplex?
c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2004. The tenancy agreement provided that the tenant(s) would pay rent of $750 per month payable in advance on the last day of the month. The tenants paid a security deposit of $350 at the start of the tenancy.

The basis of this application is ongoing dispute between the tenant and the tenants on the other side of the duplex. The other tenants moved into their unit at the end of 2013. The tenant testified they have disturbed her since that time. The disturbances are primarily caused by the tenants and their guests returning home after 11:00 p.m. to the early hours of the morning. The tenant is disturbed by the car lights. She is also disturbed by the noise when the guests leave including the slamming of car doors, talking, the honking of horns etc. On occasion the guests have blocked the access the tenant has to her driveway. The tenants testified she lived with the problem for the first 9 months. However, on September 8, 2014 a guest from the adjoining unit got into a fight with her adult son who lives with the tenant. Since then the problems have continued on a regular basis.

The tenant gave the landlord some of the video evidence in March 2015.

Witness #1 for the tenant is the tenant's adult son. He testified one of the guests of the neighbouring tenant has been arrested for threats made against him. Further, this guest breached one of the bail conditions by returning to the rental property and he was re-arrested.

Landlord's Evidence:

The landlord testified as follows:

- He does not believe that he has any right to end the tenancy of the neighbour as they are not doing anything that would give rise to the delivery of a Notice.
- The next door neighbour works an afternoon shift and she is returning from work between 11:00 p.m. and midnight. She as the right to drive her vehicle with the lights on or have someone drive her home. This is not an unreasonable disturbance. Similarly she has a right to have guests.
- The tenant has not claimed that the neighbour having parties. She has not complained about noise from the neighbouring rental unit while they are inside. The complaints relate to when the guests come and leave.
- He has talked to the neighbouring tenant and asked them to reduce their noise when they leave. The neighbours have told him that they have complied. However, there is nothing they can do about the use of their headlights and the opening and closing of doors when they leave. .
- He has talked to the police. The police have not given him any indication there is illegal activity coming from the neighbouring unit.
- The original complaints related to the guests trespassing on the tenant's property. As a result he has constructed a fence which divides the front and back property.

The landlord also referred to letters written by the neighbouring tenant and some of her guests. Briefly, the letters stated as follows:

- DC is the tenant who lives next door. She provided a letter that stated the tenant and her adult son started yelling at them over a dispute about the garbage. In December she had her family over for dinner and the son started banging on the walls and telling them to shut up. He has banged on the wall when her grandson

was playing. On another occasion the tenant's adult son started yelling at her youngest daughter and her boyfriend and start to swear at them. The letter states that the son beat her daughter's boyfriend with a bat.

- GJ wrote a letter describing the neighbour calling the police on trivial matters in the early evening.
- SG wrote a short letter describing how the tenant's son threatened him with physical violence.
- AS wrote a letter identifying a number of incidents of inappropriate behaviour by the tenant's son.
- DB wrote a letter dated April 15, 2015 stating she resided with DC and that on many occasions the tenant's son has acted inappropriately and abusively towards DC.
- KE wrote a letter describing the inappropriate behaviour of the tenant's son in banging on walls, slamming doors and calling DC and her guests with abusive and derogatory names. The letter also describes the tenant's son as behaving inappropriately in front of DC's 8 year daughter and 2 year old grandson.

Law

Policy Guideline #6 provides as follows:

Basis for a finding of breach of quiet enjoyment

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

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; **(my emphasis)**

- unreasonable and ongoing noise; ·
- 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.

…

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy."

Analysis

I dismissed the tenant's claim that I order the landlord to evict the neighbouring tenants. I do not have the jurisdiction to make such an order especially where the neighbouring tenants have not had an opportunity to be hears.

With regard to each of the tenant's monetary claims I find as follows:

a. The tenant claimed the sum of $146.67 and $395.90 which related to the cost of the preparation of the digital evidence the tenant was relying on. This is a cost of litigation. The only award with respect to cost that an arbitrator can make is the cost of the filing fee. As a result I dismissed these two claims as an arbitrator does not have the jurisdiction to make such an award.
b. Similarly I dismissed the tenant's claim of $50.39 for the cost of purchasing a USF drive. This involves a cost of litigation which an arbitrator does not have the jurisdiction to award. Accordingly, that claim is dismissed.
c. The tenant claimed the cost of photocopying in the sum of $8.25. That claim is dismissed as it relates to a cost of litigation which I do not have the jurisdiction to award.
d. The tenant claimed the sum of $7500 for the loss of enjoyment of life. The tenant was unable to explain exactly how she arrived at that figure

The Applicant's right to claim damages from the other party pursuant to section 7 of the Act which states that if a landlord or tenant does not comply with this Act the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 67 of the Act grants an arbitrator authority to determine the amount and order payment under the circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

The party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

a. Proof that the damage or loss exists,
b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act, agreement or an order
c. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
d. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant who must proved on a balance of probabilities the existence of the damage/loss and that it stemmed directly from a contravention of the Act, on the part of the respondent. Once that has been established, the claimant must provide evidence verifying the actual monetary amount of the loss or damage.

On the question of whether or not the landlord was in violation of the Act, I find that section 28 states that a tenant is entitled to quiet enjoyment including, but not limited to:

(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. (my emphasis)

This is not a situation where the landlord has caused the noise and disruption.. Rather, the tenant alleges that the landlord has failed to take reasonable measures to ensure that the quiet enjoyment of a tenant is not violated. The Policy Guideline sets out the test as to whether the landlord has **stood "idly by"** while other engaged in the unreasonable disturbing behavior. In this instance I find that the key questions to be answered are:

- Was there an "unreasonable disturbance"?
- If so, then did the landlord meet its responsibilities under the Act to take appropriate action to rectify the problem of interference of one tenant by another?
- If not - then did this non-compliance of the Act devalue the tenancy warranting a retroactive rental abatement of $7500?

After carefully considering all of the evidence I determined the tenant has failed to establish a claim against the landlord for the following reasons.

- There is no evidence that the landlord has caused any of the disturbances. .
- I find that the tenant has, on many occasions advised the landlord of her complaints about the tenants next door. However, I am not satisfied that the complaints amount to an unreasonable interference. The tenant's primary concern is being woken up by the tenant and her guests returning home after 11:00 p.m. In particular, the tenant complained about car lights, the opening and shutting of car doors and people talking while outside. The neighboring tenant is entitled to be driven home. The lights of an automobile and the noise of car doors opening and closing is not an unreasonable interference. This is not a situation where the neighboring tenant is engaged in loud and unruly parties. The tenant failed to prove this conduct amounts to an unreasonable interference.
- The tenant has failed to produce sufficient evidence to prove that the car lights and noise from the guests of neighboring tenants when they visit was negligent or intended to disturb the tenant and her son.

- Further, the tenant failed to prove that the landlord has not met his obligation under the Act. It cannot be said that the landlord stood "idly by" while others engaged in noise causing activities. The landlord has talked to the neighboring tenant and asked that she ensure her guests are quieter. The landlord has also built a fence to separate the yards as this was an earlier complaint of the tenant.
- I agree with the landlord there it is very unlikely that the landlord would be successful in obtaining an Order for Possession based on the evidence of the tenant and her son. The evidence of the neighboring tenant indicates the tenant's son has been extremely abusive and intolerant of the neighboring tenant's son.
- The tenant failed to provide evidence as to quantum of loss. When asked to explain how she arrived at her claim for $7500 she failed to sufficiently provide reasons why that is an appropriate award.

In summary I determined the tenant failed to satisfy the burden of proof that the conduct complained of amounts to an unreasonable disturbance. Further, even if the tenant had succeeded in proving that an unreasonable disturbance did occur, I determined the tenant failed to prove that the landlord failed to fulfill his responsibility under the Act in addressing the tenant's complaints to the extent as can be reasonably expected. The tenant failed to show the landlord stood idly by as required in the Policy Guideline.

Given the above, I find no merit in the tenant's monetary claim for the reduced value of the tenancy. I order that the tenant's application for a monetary order be 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: July 18, 2015

Residential Tenancy Branch