



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 123GORGE TOURISM CONSULTANCY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC O FF

Preliminary Issues

Section 64(3)(c) of the *Act* provides that subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

In previous hearings each party referred to the rental unit as being located inside a hotel of which the named respondent recently purchased. Upon review of the documentary evidence submitted by the respondent's legal counsel (Counsel) I note that Counsel had listed the respondent's name as well as his corporate name as being co-respondents to this dispute.

After consideration of the foregoing, the style of cause was amended to include the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing convened by teleconference on July 10, 2015 and again on July 29, 2015 by written submissions to determine if the *Residential Tenancy Act (Act)* held jurisdiction in this matter. Interim Decisions were issued on July 13, 2015 and July 29, 2015 in which jurisdiction was found. Accordingly, this final Decision should be read in conjunction with the two aforementioned Interim Decisions.

The Tenant, D.P. appeared and affirmed that she would be representing her co-tenant in this proceeding as she had done previously. No one appeared on behalf of the Landlord, despite the Residential Tenancy Branch (RTB) Record indicating that both parties were sent copies of the Notice of Reconvened Hearing on August 4, 2015. Based on the foregoing, I find the Landlord was sufficiently served notice of the October 13, 2015 proceeding and I continued in his absence.

Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation for loss of quiet enjoyment?

Background and Evidence

The Tenant testified that immediately following the May 22, 2015 red carpet announcement of the new owner of the hotel, the new owner's agents, his staff, began to harass them. She asserted that every day, sometimes several times during the day, someone was knocking on their door telling them they had to move out.

The Tenant submitted that the Landlord's agents would yell at them saying the hotel was not their home. The agents would say derogatory comments like "what is wrong with you why would you think this was your home and it was [Landlord's name] hotel". The agents would tell the Tenants they were delusional. The Tenant stated that the agents would also try and force themselves into their room by placing their foot inside as soon as they opened the door. She argued that it was horrifying to live with that type of daily harassment and it caused her to suffer continuously.

The Tenant asserted that once she filed her application for dispute resolution on May 27, 2015, the treatment became worse and the agents began withholding their mail. She argued that the harassment began so bad that they had no choice but to vacate the rental unit as of August 15, 2015.

The Tenant was not able to explain how she determined the \$5,000.00 amount claimed for loss of quiet enjoyment. She stated that after explaining her situation to the staff at the RTB they suggested that she request that amount and see how it turns out.

Although the Tenant seemed fixated on the events which occurred after she filed her application, after a brief discussion she stated that she understood that this decision would be issued in response to issues that occurred on or before May 27, 2015, the date of her application.

Analysis

The *Residential Tenancy Act* (the *Act*), stipulates provisions relating to these matters as follows:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) 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 damage or loss that results.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

Policy Guideline 6 states in part, that when determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Given the undisputed evidence before me, in the absence of any evidence from the Landlord or his Agents who did not appear despite being properly served with notice of this reconvened hearing, I accept the version of events as discussed by the Tenant.

Given the circumstances described to me during the October 13, 2015 hearing, I accept the Tenant's submissions that they suffered unreasonable disturbances from the Landlord's agents on a daily basis from May 22, 2015 to the time the application was filed on May 27, 2015. I find that the Landlord and his Agent's actions constituted a loss of quiet enjoyment and a breach of section 28 of the *Act*.

Upon review of the \$5,000.00 being claimed for compensation, and inconsideration that the Tenant was unable to describe how she came to an amount of \$5,000.00 for their loss, I find the amount sought to be excessive. I make this finding in part after considering that the loss of quiet enjoyment, relating to the application before me, was for a period of 5 days. Furthermore, the monthly rent was \$1,050.00 per month.

I accepted the Tenant's submissions that the harassment was so severe that she suffered a loss of quiet enjoyment "continuously". Accordingly, I grant the Tenants

compensation equal to five full days of rent calculated at the daily rate of \$34.52 (\$1,050.00 x 12 months ÷ 365 days = \$34.52 per day) for the total award of **\$172.60**.

The Tenants were partially successful with their application; therefore, I award I recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the Act.

As indicated above, this Decision is in response to matters which occurred up until the application was filed on May 27, 2015. Therefore, I grant the Tenants leave to reapply for any further loss they may have suffered after May 27, 2015.

Conclusion

The Tenants were partially successful with their application and were awarded monetary compensation of \$172.60 plus their \$50.00 filing fee.

The Tenants have been issued a Monetary Order for **\$222.60** (\$172.60 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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: October 14, 2015

Residential Tenancy Branch

