



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS BENEVOLENCE GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue to be Decided

Is the tenant entitled to a monetary award for loss or damage arising out of this tenancy?

Background and Evidence

Based on the tenant's documentary submission, this tenancy began on August 14, 2012 as a 2 month fixed term. The tenancy has continued on a month to month basis since that date to present. The tenant claims that the landlord "continues to harass, intimidate and/or threaten this tenant for representing the other Tenant's rights under the Residential tenancy Act [sic]." The tenant submitted that he has been harassed and intimidated by being issued a series of unsubstantiated eviction notices in the past year. The tenant testified that the landlord has been penalized for five previous eviction notices but that the landlord has not been deterred from issuing these notices. He submitted a copy of a prior decision of the Residential Tenancy Branch ("RTB") where an eviction notice issued by the landlord was dismissed. In this application, the tenant relies on section 28 of the *Act*, that a tenant has a right to "quiet enjoyment" and that his rights under section 28 have been affected by the behaviour of the landlord.

The tenant testified that a notice to end tenancy was issued to the tenant on DATE. He testified that, despite the fact that five (5) other notices to end tenancy had been cancelled as a result of RTB hearings. He testified that he had been awarded a nominal amount for the issuance of those notices by the landlord, submitting decisions that refer to the issuance of the notices as harassment of the tenant. The tenant testified that the landlord continues to attempt to issue

notices to end his tenancy and therefore harass him, infringing on his right to quiet enjoyment. Furthermore, the tenant submitted that the previous amounts (\$250.00, \$100.00 and \$250.00) awarded to the tenant have not deterred the landlords from the alleged harassment.

The tenant testified, further to detailed written submissions, that he has been verbally threatened by the landlords; that his rental unit has been entered without his permission; that the landlords have stalled in replacing the mattress in his single room rental unit; and that he continues to receive both written and verbal indications that the landlords intend to end his tenancy.

Landlord KD testified that she doesn't remember making any comments to the tenant that were threatening or that indicated the landlords wanted to end his tenancy. She testified that, with respect to providing a new mattress to the tenant, two separate mattresses were offered to him and that the tenant declined both mattresses. The tenant testified that one bed was too big for his unit and one was very dirty and damaged. The description of the beds offered by the tenant was not denied by the landlord's representatives at this hearing.

The representatives of the landlords present at this hearing submitted that any difficulties tantamount to harassment occurred before they became landlords of the residential premises. They both testified that the respondent at previous RTB hearings was a "previous landlord". They testified that they cannot be held responsible for the behaviour of the "previous landlords". They testified that they have been attempting to resolve matters with the tenant since becoming landlords at the residential premises.

The landlord's written submissions include the following information,

- That the current property managers were hired at the end of 2014;
- That the previous property manager paid the prior "penalization fees" issued by the RTB, not the landlord;
- The landlord now contracts the current property managers to maintain the residential premises;
- The current property managers have never "harassed, intimidated and/or threatened" the tenant;
- The current property managers, on behalf of the landlord, issued a two month Notice to End Tenancy for Landlord's use (regarding "wall façade project") and that notice was cancelled on application by the tenant; and
- The owner/landlord of this residential property remains the same.

The tenant submitted copies of some previous decisions issued by the RTB with respect to his tenancy. The landlords submitted that the tenant was selective in which decisions he chose to provide. The landlords submitted that many applications by the tenant have been dismissed by the RTB. A copy of the previous RTB decision issued on August 7, 2014 and submitted by the tenant indicates that,

there is no basis for the one month Notice to End Tenancy for cause dated May 27, 2014... I do find that the Notices given by the landlord and the conduct of the landlord's representatives surrounding the giving of these Notices does constitute harassment of the tenant that has interfered with his quiet enjoyment of the rental unit. I find that the tenant is entitled to compensation for this harassment and loss of quiet enjoyment, for which I award him the sum of \$250.00...

A copy of a previous RTB decision issued October 14, 2014 provides a similar finding, setting aside the Notices to End Tenancy addressed at that hearing and issuing a monetary award of \$100.00. A copy of an RTB decision issued October 29, 2014 also cancels a notice to end tenancy issued to the tenant by the landlords and provides a monetary order in the amount of \$250.00.

The tenant sought a monetary order in the amount of \$1000.00 for the continuing harassment (and disruption of the tenant's right to quiet enjoyment) by the landlord.

Analysis

A tenant's right to quiet enjoyment is protected under section 28 of the Act,

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.

The tenant argues that the landlord is responsible for his lack of quiet enjoyment and that the landlord has caused the tenant unreasonable disturbance at his own home by harassing the tenant. The tenant argues that the harassment includes but is not limited to the ongoing issuance of unsubstantiated Notices to End his tenancy. In previous RTB decisions dated both prior and after the take-over of the most recent property managers, the writing arbitrator refers to the ongoing issuance of the Notices to End Tenancy to the tenant as harassment. The tenant submitted that the current landlords did not deny issuing a notice to end tenancy that has been cancelled as a result of RTB dispute resolution hearing or that, at the previous RTB hearing they sought to end this tenancy. The tenant testified that the attempts to evict him are "never going to stop".

Residential Tenancy Policy Guideline No. 6 further addresses a tenant's right to quiet

enjoyment.

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."¹ A landlord does not have a reciprocal right to quiet enjoyment.

Every tenancy agreement contains an implied covenant of quiet enjoyment and determining a breach of quiet enjoyment requires that the tenant show there has been substantial, serious ("frequent and ongoing") interference that would give sufficient cause to warrant the tenant leaving the rental premises or, more plainly, to show repeated or persistent threatening or intimidating behaviour by the landlord. I find, in accordance with previous RTB decisions, that ongoing issuance of Notices to End Tenancy to this tenant without sufficient grounds to do so is a form of harassment of this tenant.

Policy Guideline No. 6 refers to the need to balance the tenant's right to quiet enjoyment with the landlord's right to maintain the premises. The guideline specifically defines harassment;

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".³ As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser.

There should be no doubt in the mind of the landlords (both owner and property managers) that repeated notices to end tenancy would be unwelcome by the tenant. If this is not common-sense or apparent to the landlord, then it should be evident by the tenant's repeated complaints to the RTB with respect to these notices. It is also highly relevant that these notices have been found unsubstantiated by RTB arbitrators on more than one occasion. And it is also relevant that, in those previous decisions, the tenant has been awarded a nominal amount to reflect what has been described as "harassment". Given the lack of ability of the landlord's to provide any substance to the notices to end tenancy issued to the tenant and the fact that those notices have been issued repeatedly and continuously after RTB arbitrators have described these actions as harassing and vexatious and given that the landlord/owner remains the same entity as has always been, I find that the actions of the landlord in issuing these notices constitutes harassment.

With respect to the landlord's attempt to distinguish themselves from the previous landlord, I note that the owner/landlord has not changed. The owner/landlord has contracted with a

different property manager. I find that the ongoing actions of the landlord and current property managers in issuing notices to end this tenancy perpetuate the previous actions that have been characterized as harassment. Furthermore, I find that the current property managers have not acted in a manner that differentiates them from the previous property managers. I find that there is no substantial difference in "landlord" and therefore, the harassing behavior represents an ongoing and continuous pattern.

I note that, while I have turned my mind to all the documentary evidence and all of the testimony at this hearing, not all details of the respective submissions or arguments are reproduced within this decision. The principal and most relevant aspects of the submissions and my findings are set out in this decision. Therefore, given all of my findings, I issue a monetary award to the tenant in the amount of \$1000.00 for the ongoing and repeated harassment of this tenant.

Conclusion

I issue a monetary Order in favour of the tenant in the amount of \$1000.00.

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: December 30, 2015

Residential Tenancy Branch

