



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0781178 BC Ltd. and Lion Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, RR

Introduction

This hearing dealt with an application by the tenant for a monetary order; an order compelling the landlord to comply with the Act, regulation or tenancy agreement; and an order reducing the rent. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Should a monetary order or rent reduction be ordered in favour of the tenant and, if so, in what amount?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced March 27, 2015. The monthly rent of \$450.00 is due on the first day of the month. The rental unit is a room in a SRO hotel.

The tenant testified that his problems began in September 2015 when M moved into the room directly above him. He said M is a nice person but busks until late at night and drinks. He testified that M comes in late at night, makes all kinds of noise until early in the morning, and then sleeps all day. On some occasions M has apologized or given him gifts but then the noise re-occurs.

He has complained repeatedly about the noise to the landlord, both in person and in writing, but the landlord has not taken any action except to serve he and M with a 1 Month Notice to End Tenancy for Cause in December. The landlord did not take any action to enforce the notices so the tenant's application to have it set aside was successful.

The tenant testified that he is bi-polar and has to take medication to stay on schedule. He also testified that he needs a lot of sleep. He said he has regular appointments during the week but sometimes he is so tired from lack of sleep he cannot keep his appointments.

The tenant testified that he has headphones and he wears those when he goes to sleep. They work well until they fall off. He does not use ear plugs because he does not want to miss any alarms that may sound while he is sleeping.

The tenant also testified that he is hard of hearing.

In support of his application the tenant filed a letter from A who stated he lived below M from March 2014 to October 2015 and that M made noise all night long. The tenant also filed a letter from his next door neighbour K who stated that the tenant is a model neighbour; he has heard the noise coming from M's room on many occasions; and that M has apologized to the tenant for the noise, something he would not do unless he knew he was doing something wrong.

The night shift manager testified that he has been a resident of the hotel for six years and an employee for the past three years. He said the hotel was built in 1015 but had a \$1.5 million renovation about five years ago.

He testified that the tenant complains about noise from M's room every day. Three times in the previous two weeks he has gone to check after the tenant complained about M and when he got there, there is no noise. In the past, after checking the security camera footage they have been able to confirm that M was not even in the building at the time of the complaint. He said they have never received any other complaints about M.

The night shift manager testified that M was recently offered a different room, on the main floor, but declined it because the previous occupant had died – in messy circumstances – in it.

He testified that the tenant has been a difficult resident himself: that he has made threats against other residents and on one occasion threatened to burn the building down.

M testified that he has lived in the hotel for about four year. He lived in a different room until September 2015.

M testified that the tenant has complained to him about noise during the day as well as at night on a few occasions. He acknowledged that he has been noisy on a few occasions in the past but he has been quiet for some time. He also said he is afraid of the tenant.

He was served with a 1 Month Notice to End Tenancy for Cause in December. He understood that the tenant had told the landlord they were trying to work things out so the landlord did not pursue the matter.

M said he was offered another room a month or two ago but he declined it because it was too small to hold all his possessions. After some prompting from the night manager he also said he did not want the room because someone had died in it.

M said K used to be his best friend and he never complained to M about noise. He has never had anyone other than the tenant complain about his being noisy.

J, a desk attendant, testified that he has lived in the hotel since September 2015 and has held his current position for two months. He testified that he has been to M's room ten times in the past two months in response to the tenant's complaints about noise. On each occasion it has been quiet.

R, a resident of the building, testified that he helps with cleaning and desk duties as a volunteer. He described an occasion when he knocked on the M's door after receiving a complaint from the tenant about noise. He did not hear any noise and when he knocked on the door there was no answer. When he checked the security cameras he saw that M was not in the building. The next day when he tried to show the tenant the footage the tenant refused to look at it. This has happened several times in the past two months. Only once did the tenant look at the footage, and then he said the landlord must have altered the tapes.

R testified that meanwhile the people who live next door to the tenant make all kinds of noise and are the subject of frequent noise complaints. However, the tenant has not complained about these neighbours. R suggested that the tenant may have an ulterior motive for not complaining.

In response to the comments made by the landlord's witnesses the tenant testified that:

- His hearing problem is not with volume but with making out syllables – tone deafness.
- His prescribed medication does not cause him to hear voices.
- He does not use any street drugs that would cause him to hear things.

The parties all gave evidence about various disputes between the tenant and M; the tenant and R; and the tenant and hotel management.

Analysis

On any application the onus is on the applicant to prove their claim on a balance of probabilities. In this case, the first thing the tenant must prove is that his upstairs neighbour is as noisy as he claims.

The evidence in this case boils down to the tenant and his witness saying M is noisy most of the time; M and the landlord's witnesses saying that upon investigation the tenant's complaints have never been borne out.

The only fact on which there is unanimity is that the tenants complains about the situation a lot – to the landlord and to his health and support workers. However, this only establishes that the complaints have been made; not the truth of the substance of the complaints.

This hotel is a small community and clearly there are many interpersonal dynamics between the people who live there. Some of them were on display in the hearing. In that sense, none of the witnesses, including the tenant, may be considered an independent or unbiased witness.

There is no reason for me to prefer the evidence of any witness over the other and no other evidence to tip the balance of probabilities in the tenant's favour. As the tenant has not met the onus of proof, this claim is dismissed.

Conclusion

For the reasons set out above, the claim is 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: April 15, 2016

Residential Tenancy Branch