Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for a breach by the landlord of the tenant's right to quiet enjoyment or loss of quiet enjoyment. The landlords and tenant were represented at the hearing.

Both parties provided document evidence and each acknowledged receiving the evidence of the other.

Issue(s) to be Decided

Are the tenants entitled to compensation?

Background and Evidence

The parties presented an abundance of evidence, however only the relevant evidence is reflected by this Decision. The tenancy began in June 2006, with current rent payable at $597.00 per month and the tenancy continues. The tenancy is described by the parties as one of a shared arrangement with potentially 3 other occupants each with a separate tenancy occupying their own bedroom with kitchenette, and all occupants sharing the bathroom facilities.

The tenant claims that for the period of approximately 6 weeks - June 26 to August 12, 2015, the landlord knowingly permitted what they purport to be an unsuitable tenant, DD, to rent the shared accommodations with the 3 existing tenants of the property. The tenant claims DD had substance abuse issues and a criminal history, and been violent toward a female.
The tenant claims that DD's conduct during their occupation compromised the tenant's safe access to the shared bathroom, laundry and other property of the residential

building. The tenant testified they were threatened and harassed by DD during their short tenancy, resulting in " 6 weeks of stress". The landlord does not deny the tenant and DD experienced a relationship breakdown – stating, "no doubt about it", the 2 tenants had a flawed dynamic between them which fuelled the problems. The tenant argued the landlord erred in their assessment of DD at the outset, testifying the landlord should have better screened DD for occupancy with the 3 other tenants as there were indications of possible problems presented to the landlord.

The landlord testified they were mindful to ensure DD's suitability. They interviewed them and took their mental state into account, spoke to and relied upon their 2 support workers and their information about DD, considered their physical and medical state and felt they took a reasonable approach to ensure their suitability so as to avoid problems. The landlord concedes that despite their best approaches to both the tenant and DD the situation deteriorated so as the tenant's tenancy and quiet enjoyment became effected. The landlord acknowledges the tenant has suffered a loss, and that some compensation may be appropriate, but is not convinced from all the evidence presented they should be found completely responsible for such loss and the tenant's monetary claim on application.

The tenant presented a series of written communications with the landlord and with police respecting their concerns about DD as well as describing DD's conduct toward them.

On July 08, 2016, 2 weeks into DD's tenancy, the tenant wrote the landlord DD was vacuuming in the hallway, purportedly intoxicated and swearing to themselves and thereby disturbing the tenant. The letter informed the landlord they had learned that DD was a known street person, on anti-psychotic medication, known to police and had been arrested for beating up a girlfriend, was recovering from a broken hip, and being paid by the landlord for cleaning the common areas of the property. The tenant reported that due to DD's history the landlord had not considered the negative effect of DD on the other tenants – that, alternatively, DD should have been placed in an appropriate living situation. The tenant described that as a result they did not feel safe in their tenancy and that previously they were assured by the landlord that such problems would not be introduced onto the property.

On July 14, 2016 the tenant again wrote the landlord a short letter informing them that DD's conduct of swearing, talking to themselves, and frequently wandering the hallways. The tenant again expressed concern for their personal safety and requested a response from the landlord regarding their concerns with DD living on the property.

On July 23, 2016 the tenant again wrote a letter to the landlord informing them they had heard concerning conduct from DD and had experienced a troubling and stressful interaction with DD. The tenant requested the landlord remove DD from their tenancy – that they did not feel safe and as a result were not enjoying their home.

The tenant's written notices to the landlord, and also to the police, continued throughout July and into early August. The tenant provided accounts of repeated incidents of their concerns over DD's conduct and the effects on the tenant and the other tenants of the shared accommodation. The tenant testified they felt threatened of physical harm and suffered a loss of sleep. The tenant provided corroborating information from the other shared tenancies DD's tenancy was concerning and becoming intrusive on all of the shared tenancies of the property.

The landlord provided an extensive log of events noting dates from July 05 to the end of DD's tenancy in mid-August 2016. The landlord testified they never ignored any of the tenant's concerns or complaints and their log proves they worked diligently behind the scenes to manage the activity produced by DD's tenancy, as well as the tenant's continual communications, and the interactions and well being of the other tenants. The landlord highlighted their many contacts with DD's support workers and their efforts to re-house DD. On July 23, 2016 the landlord tasked their agent to end DD's tenancy resulting in DD receiving a Notice to End the tenancy, while continuing to communicate with DD's supports to relocate DD. The landlord testified they thought they acted diligently with compassion and within the parameters of the Act to resolve matters for all concerned.

The tenant claims the amount of $1197.74, or the equivalent of 2 month's rent: all their rent paid for the 6 weeks of DD's tenancy and all their disbursements related to the dispute resolution process, represents their loss in this matter.

Analysis

Section 28 of the Residential Tenancy Act clearly addresses the tenant's entitlement to freedom from unreasonable disturbances. Residential Tenancy Policy speaks to the subject of a loss to quiet enjoyment. The basis for a finding of a breach of the tenant's entitlement to quiet enjoyment will be dependent on the factors behind the cause for a purported breach.

It must be noted that a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and also situations

in which the landlord was aware of the interference, but failed to take reasonable steps to correct it. More specifically to this matter is that a landlord can be held responsible for the actions of other tenants **if** it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I find that the testimony of both parties was matter of fact, clear, and made sense in their respective contexts. That is, the tenant's evidence clearly communicated their stress in their living situation and the landlord clearly communicated they did not ignore the tenant and worked to respond to the tenant's complaints and resolve the tenancy issues. I am convinced by the copious documentation of both parties, but especially the tenant's in this matter, that both parties were challenged by DD.

I must consider (a) the amount or seriousness of the disruption to the tenant (b) the reason for the disruption; and moreover (c) did the landlord make reasonable efforts to minimize disruption? And, (d) once aware of a problem, did the landlord take reasonable steps to correct it ?

I find the tenant was clearly disturbed by DD for the subject period of approximately 6 weeks and I accept that for those 6 weeks the tenant's quiet enjoyment was degraded. I find the landlord does not dispute this point.

I find the landlord took DD's suitability for the accommodations seriously, taking reasonable measures to avoid problems in the shared accommodation. I find the landlord took into account DD's presented mental state and information provided by DD's support system and their medical state. I further find that the landlord, once made aware of problems in the shared tenancy arrangement, made efforts to address the problems and took steps to engage supports and worked toward re-housing DD. As a result, I am not convinced the landlord caused interference to the tenant nor ignored their responsibility to resolve interference once identified. Therefore, I find the landlord cannot be made directly responsible for compensating the tenant for their loss of quiet enjoyment.

None the less, I take into consideration the landlord's acknowledgement of a reduction in the value of the tenant's tenancy because of the degree to which they were disturbed by the events in the subject period; and, their acceptance of compensation for that loss.

As a result, I find compensation for a loss of quiet enjoyment in the amount representing a reduction of the value of the tenancy by *approximately* 20% of all rent paid by the tenant in the subject period of *approximately 6 weeks* is appropriate [$597.00 x 1.5 x .20 = $179.10). I grant the tenant the **set amount** of **$200.00**.

Despite the tenant having had some success in this matter I find that if the tenant had not made as extravagant a claim as presented, they and the landlord may have likely met with success in resolving the matter between them. As a result, I grant the tenant a portion of their filing fee in the amount of $25.00 for a sum award of **$225.00.**

Conclusion

I have awarded the tenant the amount of $225.00. The tenant is given a Monetary Order in the amount of **$225.00.** The tenant can choose to collect on the Monetary Order through the Small Claims Court (if necessary), or through reducing this amount from a future rent payment.

This Decision is final and binding on both parties

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 29, 2016

Residential Tenancy Branch