Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, OLC, O

Introduction

This was an application by a former tenant for compensation pursuant to section 51(2) of the Act, compensation for breach of quiet enjoyment, recovery of the security and pet deposit, and an order that the landlord comply with the Act. Both the landlord and the tenant were represented at the conference call hearing

Issue(s) to be Decided

Is the tenant entitled to be compensated and if so how much?

Background and Evidence

At the outset of the hearing the tenant advised that the security and pet deposit had been determined in a previous hearing on June 16, 2016. Accordingly I have dismissed the application regarding the security deposit.

The tenant testified that the tenancy began on March 1, 2015 and ended on February 29, 2016 pursuant a Landlord Use Notice to End the Tenancy dated December 28, 2015. The tenant applied for compensation equivalent to two month's rent pursuant to section 51 (2) of the Act.

> Tenant's compensation: section 49 notice
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> **51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant produced evidence that the unit had been advertised for rental shortly after the tenancy ended. The tenant requested compensation equivalent to two month's rent.

The tenant submitted that the landlord 's agent had shown the property in an excessive amount and without 24 hours prior written notice over a period of seven months and therefore the tenant requested compensation amounting to $ 1,240.00 for breach of the covenant of quiet enjoyment calculated at $ 20.00 per day for 62 days.

The tenant submitted that her ex-husband who resided in the unit for most of the time objected to the showings, their frequency and produced an undated letter from him composed at after the tenancy ended stating that he objected to the unit being shown initially five to six times a week and the landlord's agent threated him with a "seven day eviction" unless he agreed. He further stated that only after he showed the landlord's agent a copy of the RTB's quality of life information did they reduce showings to three times a week. The tenant submitted that the unit was shown 14 times in June and 8 times for every month thereafter until November.

The landlord's agent testified that she initially wrote to the male tenant and requested that he give permission to show the unit without full 24 hours written notice but would work out a schedule with him, at his convenience, so he could be present to supervise his dog. The landlord promised email notice in advance to which he could object at any time. The landlord denied ever threatening the tenant or putting pressure on him.

The tenant claimed for compensation because the air-conditioner which was part of the tenancy, did not work for seven months from April 2015 through October 2015. The tenant claims the landlord was notified but never sent a technician to repair it. The tenant testified that she personally turned it on over night several times and it did not work. She testified that a friend who is a repair person told her a part was broken. She is claiming for the loss of use of the air conditioning at $ 100.00 per month for seven months totalling $ 700.00.

The landlord MG testified that the air conditioner was serviced two months before the tenants moved in and was and had always worked without problem. MG testified that her husband attended the unit and showed the male tenant how to operate it, however when she drove by the unit on several occasions she observed all the windows were open. She concluded that operator error was the cause of the "malfunction". MG admitted not calling a technician to determine if the unit was actually malfunctioning.

The tenant responded that she doubted that MG's husband ever came over because her ex-husband tells her everything and never mentioned it.

Analysis

Section 51 (2) of the Act permits compensation if the landlord or purchaser as applicable does not accomplish the stated purpose of the eviction Notice. In this case the tenant is alleging that the *purchaser* did not accomplish the stated purpose in the Notice. Accordingly I find that the tenant must claim against the purchaser and not the seller who was the landlord. Accordingly I have dismissed the tenant's application for this head of compensation with leave to reapply.

The tenant claimed that the showings were without proper notice. Section 29 of the Act states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) **the tenant gives permission at the time of the entry** or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

The tenant admitted that permission was given prior to half of the showings because the tenant felt pressured but none was given for the remainder. The evidence produced by

both the landlord and tenant indicates that there was continuing communication between the landlord and tenant as to when, how, and the frequency of the showings. Furthermore it was the tenant's husband who insisted that he be present because of his dog, as otherwise the showings could have occurred without him being in the unit. The evidence produced by the parties shows that the tenant consented to the showings and that the landlord attempted to accommodate him. The tenant did not produce any evidence from the male tenant nor did he testify as to the actual number of showings, that he was surprised by and had not given prior permission for them. Accordingly I reject this tenant's submission that half of the showings were without notice as conjecture. For all of the showings, I do not find that the landlord was in breach of section 29 of the Act.

The Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" summarized the law relating to the landlord's covenant for quiet enjoyment. It provides:

> The *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:
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> • reasonable privacy
> • freedom from unreasonable disturbance,
> • exclusive possession, subject to the landlord's right of entry under the Legislation, and
> • use of common areas for reasonable and lawful purposes, free from significant
> • interference.
>
> Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.
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> • **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;
> · 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.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.
Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

The tenant claims that the showings for the sale of the unit were excessive yet the tenant's own evidence suggests that the number of weekly showings of the unit, in June were 14 and thereafter 8 per month. While I agree these visits were inconvenient and unwanted, but I do not find that they were excessive. I further find that while I disagree with the landlord's agent that section 49 of the Act's compensation is not intended to compensate for this inconvenience, that it they were not malicious, reckless, a breach of the Act or an activity of such of a degree to be equivalent to a loss of quiet enjoyment. For all of the above reasons I have dismissed the tenant's application for compensation for the showings of the unit.

Regarding the air conditioner issue, there was conflicting testimony as to whether it was working or not. I accept the tenant's testimony that she observed that it was malfunctioning however I do not attach much if any weight to her evidence that the landlord's husband likely did not instruct her husband how to operate the unit because he failed to mention it. This is sheer speculation. I also find equally that the landlord's submission that the unit's malfunction was from operator error as conjecture. I find by the landlord's own admission that she failed to take the tenants' complaints seriously and did not call a technician to inspect the unit. I accept the tenant's evidence that it

was not working properly for seven months, that the landlord was notified and that the landlord did not take appropriate steps to repair it. I find that the landlord failed to provide a working air conditioner in accordance with the tenancy agreement. Accordingly, I award the tenant the sum of $ 100.00 per month for seven months for a total of $ 700.00.

Conclusion

I have dismissed the tenant's claim for the recovery of the security and pet deposit. I have dismissed with leave to reapply the tenant's application for compensation pursuant to section 51 (2) of the Act. I have awarded the tenant the sum of $ 700.00 for the failure by the landlord to provide a working air conditioner. I have dismissed all other applications by the tenant.

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: August 09, 2016

Residential Tenancy Branch