



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for the following Order:

1. A Monetary Order for compensation - Section 67.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Landlord breached the Tenant's right to quiet enjoyment?

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 1, 2012 and ended on March 31, 2016. Rent of \$950.00 was payable on the first day of each month. No security deposit was collected.

The Tenant states that the tenancy started out good and that the Tenant was a friend of the Landlord's family. The Tenant states that the tenancy changed when the Tenant started to have issues with the noise coming from the Landlord's children in the upper unit and the Landlord refused to keep his children quiet. The Tenant states that his own music level was modified.

The Tenant states that the Landlord breached the Tenant's right to quiet enjoyment of the unit by serving the Tenant with notices to end tenancy for cause and attempting to evict the Tenant without cause. The Tenant states that the first eviction attempt occurred on February 28, 2015 when the Landlord served the Tenant with a notice to end tenancy for carrying out illegal activities. The Tenant states that this act caused great stress for the Tenant as he had done nothing illegal. The Tenant states that he disputed the notice and was successful in having it cancelled.

The Tenant states that subsequently the Landlord came to his door on April 30, 2015 and told the Tenant that they wanted him out of the unit. The Tenant states that although the Landlord had a formal notice to end tenancy for cause at hand it was not served on the Tenant. The Tenant states that the Landlord gave him no reasons for wanting to evict the Tenant other than saying that the mood was not good.

The Tenant states that nothing happened again and there was no interaction with the Landlord other than the occasional greeting until August 1, 2015 when the Landlord again brought a notice to the door and told the Tenant that the tenancy needed to end but that no notice was given to the Tenant. The Tenant provides copies of notices to end tenancy for cause dated April 30, 2015 and August 1, 2015. It is unknown how the Tenant came to have these copies.

The Tenant states that on August 31, 2015 the Landlords served the Tenant with a notice to end tenancy for cause and the Tenant disputed this notice successfully. The Decision dated November 19, 2015 notes that there had been no significant interference or unreasonable disturbance since the hearing on April 8, 2015.

The Tenant states that on January 19, 2016 the Landlord served the last notice to end tenancy for landlord's use and despite the Tenant's dispute of this notice the Landlord successfully obtained an order of possession ending the tenancy for March 31, 2016. The Tenant states that between the first hearing of April 13, 2016 and the last hearing there was no interaction between the Parties other than the occasional greeting and that at no time did the Landlord inform the Tenant of any problems.

The Tenant states that the Landlord's actions in attempting to evict him amounts to harassment. The Tenant states that after the first hearing the Tenant realized that the Landlords would not stop trying to evict him and that this caused him great and constant stress. The Tenant states that his work suffered and he lost sleep. The Tenant states that he only wanted to be left alone to live and work in peace and modified his own behavior to reduce noise. The Tenant states that he had to leave his unit for a couple of months for work purposes and during this time he was constantly worried that the Landlord would enter his unit as the Landlord had keys to the unit and knew when the Tenant was not at home. The Tenant states that the Landlord has entered the unit previously to reset a breaker while the Tenant was not at home. The Tenant states that the Landlord could easily use an emergency as a pretence to enter his unit. The Tenant states that he has no evidence of any entry by the Landlord without the Tenant's permission unless it was an emergency with water ingress or the breaker.

The Tenant states that every time the Landlord came to his door it was very stressful and that the Landlord was never willing to listen to the Tenant's side and that the Landlord treated the Tenant like a second class tenant. The Tenant states that he just wanted to be left alone and did not start any problems. The Tenant states that despite being relieved by his success with the first and second notices he was still disturbed by worrying about when the Landlord would next come to his door to evict him without any reasons.

The Landlord states that the Tenant never wanted to cooperate with the Landlord's requests when there were problems with his stereo. The Landlord states that the Tenant is just a money grabber. The Tenant states that the application for this hearing was made in September 2015 when the Tenant was under significant stress and aggravation.

The Tenant states that it was not until he was moved out of the unit that he realized the significant stress he had been under and that he was stressed about what was yet to come. The Tenant states that an ongoing issue remained and that there are lots of "undertones" and history. The Tenant did not elaborate on this but states that this hearing caused stress because of the ongoing issue.

The Tenant states that he now has post-traumatic stress disorder (PTSD) and that he has experienced a severe shortage of sleep. The Tenant argues that the counsellor's letter sets out a direct causal connection between the Tenant's emotional distress and the acts of the Landlord in attempting to end the tenancy. The Tenant states that he did not consider ending the tenancy because he had a right to stay in the unit and that prior to the last hearing he had a 3 month work contract that did not allow the Tenant to move out of the unit. The Tenant states that he believed prior to the last hearing that he would eventually move out of the unit when he felt he was capable of the move. The Tenant provides a letter from a counsellor and a medical note. The Tenant claims costs of the past and future counselling, compensation for mental distress and compensation for aggravated damages. The Tenant argues that there was a foreseeable outcome of stress from the Landlord's attempts to evidence and that the Landlord recklessly accused the Tenant of illegal activities. The Tenant argues that the courts take unproven allegations very seriously. The Tenant argues that the repetitive actions by the Landlord shows an indifference to the outcome and effects on the Tenant.

The Landlord states that the first notice was filled out in error as the wrong box was ticked and that there was never any illegal activity. The Landlord states that the Tenant was disturbing other tenants and that this was the reason for the first attempt to evict the Tenant. The Landlord states that as the Tenant continued to make noise they tried to serve the second notice on the Tenant on April 30, 2015 but changed their mind when the Tenant said he would dispute the notice and because the Tenant told the Landlord that he would be fine for two months so the Landlord thought they could give the Tenant more time. The Landlord states that the next attempt on August 1, 2015 the Tenant told the Landlord that he would take the dispute to the highest court and that this caused the Landlord to be afraid. The Landlord states that the Tenant was very quiet between February and August 31, 2015 and that the Landlord had no complaints about the Tenant. The Landlord states that the final notice that was served on the Tenant on January 19, 2015 had nothing to do with the Tenant's behavior. The Landlord states that while the Tenant was not at the unit the Landlord would never enter even when a leak occurred. The Landlord states that they could not check on this leak for 2 months while the Tenant was gone.

The Landlord argues that the first notice alleging illegality was an honest mistake and that it is not reasonably foreseeable that any harm could flow from this mistake. The Landlord states that at the first hearing the arbitrator was not willing to hear any evidence of the Tenant's unreasonable behavior. The Landlord argues that the Tenant's application is vexatious and with the improper purpose of seeking revenge. The Landlord argues that the Tenant's application has no merit. The Landlord states that evidence of this is provided by a text message from the Tenant to a relative of the Landlord wherein the Tenant states that he beat the Landlords a second time at the arbitration and that "this is just the beginning...now I will show them who they're f---ing with!!!". The Landlord argues that this is an improper purpose and the Landlord seeks to have the Tenant given an administrative penalty or be charged criminally as provided under section 95(2)(b) of the Act.

The Tenant states that the text was not properly translated and that the text states that "now I will show them who they are agitating". The Tenant denies that his claims are based on vengeful behavior.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance. Section 47 of the Act provides that a landlord may end a tenancy, inter alia, if there is cause. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

I accept that the Landlords believed that they had reason to end the tenancy based on the Tenant's behavior when they served the first notice to end tenancy for cause. However, while I accept the Landlord's evidence that the "illegal" reason for the first attempt to end the tenancy was an error, given the subsequent actions of the Landlord to seek to end the tenancy based on the Tenant's behavior, I consider that this error was the beginning of subsequent errors in strategy to end the tenancy.

It is undisputed that there were no disturbances by the Tenant and no intersections between the Parties except for three occasions between the first and last hearing when the Landlord orally informed the Tenant that they wanted the tenancy to end for cause and when the Landlord served the second notice to end the tenancy for cause. It is undisputed that there was no basis for the Landlord to end the tenancy due to the Tenant's actions during this period and I find therefore that the Tenant has substantiated that the Landlord's actions in this time frame did disturb the Tenant's right to quiet enjoyment of the unit. While I consider the Landlord's actions to be wrongheaded given the evidence of the Landlord not serving notices that were on hand in April and August 2015 I do not consider the Landlord's behavior to be recklessly indifferent.

I accept the Tenant's persuasive and supported evidence that those attempts were highly intrusive and unsettling to the Tenant however there is nothing to support that the Tenant has

or is experiencing post-traumatic stress disorder, indicating that the Landlord's actions were traumatic. I also find that the Tenant's evidence of fear of entry by the Landlord to be exaggerated. There was no supporting medical evidence of any physical problems caused by the Landlord's actions and I note that the medical note only refers to "adjustment reaction". The timing of the counselling undertaken in June 2016 seems somewhat suspect and details were left out by both Parties leading me to accept that more was going on between the Parties and I note the original family and friend connection. I do not therefore consider that the Tenant has substantiated an entitlement to aggravated damages and I dismiss the claim for \$8,000.00 and the claim for the cost of future recommended psychotherapy.

Given the counsellor's report I accept that the Tenant had some emotional difficulty during the tenancy and following its end that can be attributed to the Landlord's actions. I find therefore that the Tenant has substantiated an entitlement to the counselling costs of **\$283.50**. Given the Tenant's evidence that he was not at the unit for a couple of months between the first and last hearing and that he otherwise had full use of the unit but accepting that the Tenant did lose some enjoyment of the unit, I find that the Tenant has only substantiated a nominal amount of **\$100.00** for each month for the period April to December 2015 inclusive for a total amount of **\$900.00**. As the Tenant's application has met with minimal success I find that the Tenant is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$1,233.50**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,233.50**. If necessary, this order may be filed in the 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: September 2, 2016

Residential Tenancy Branch