



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, O

Introduction

The tenant applies for a monetary award for compensation for unacceptable living conditions caused by the landlord's failure to quell repeated disturbances from a neighbouring apartment. He also seeks reimbursement for office supplies for this dispute, a private investigator's fee, a data entry fee and damages for breach of an agreement that the landlord wouldn't rent the neighbouring apartment to noisy tenants.

Both parties attended the hearing, the landlord by its representative Mr. C., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The style of cause has been amended to show the landlord's true lawful name.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has been unreasonably disturbed by his neighbouring tenant and that the landlord has failed to take reasonable steps to deal with the matter? Does it show that the landlord had an agreement regarding the occupancy of the neighbouring suite and that the agreement has been broken? Is the tenant entitled to recover disbursements for office supplies, data entry or for a private investigator's fee?

Background and Evidence

The rental unit is a one bedroom suite in a subsidized housing complex. The tenancy started in October 2011. The current monthly rent is \$328.00, due on the first of each month, in advance. The landlord does not hold any deposit money.

The tenant says he has been repeatedly disturbed by excessive noise from the neighbouring apartment #904 for a year. He cites 24 complaints. He says his neighbour Ms. M.D. is a prostitute and brings her business home with her.

He has filed at least six "official complaints" with the landlord.

The first complaint report indicates loud, excessive noise in the room above his bedroom at 11:00 a.m. on December 13, 2015, interrupting his sleep. Again, the same day he logged excessive noise that evening. On December 15 he noted loud banging from above his bedroom. On December 19 and 22 he was interrupted by loud banging and excessive noise. The interruptions continue on December 23, 25 (twice) and then on December 26 he logged four interruptions over the early morning hours.

On December 31, January 1 and 2 he logged the same type of interruption. On January 4 he was disturbed twice in the morning. He called the landlord but received a message service. A landlord's representative called him back and he verbally reported his complaints.

On January 7 he logged three incidents of loud hammering and excessive noise from 904 and called the police reporting excessive noise, loud music, yelling and swearing. The police attended but the tenant doesn't think they spoke with the tenant in 904.

On January 8 the tenant logged two disturbance events, loud hammering and excessive noise, in the afternoon. On January 21 he logged his disturbance from loud knocking, walking and banging from 904. On January 22, late at night, he logged a disturbance from yelling swearing and loud music, with "multiple guests" visiting 904.

The tenant logged similar events occurring on January 23, February 3, 6 and 9. On February 11 he called the police to report the excessive noise.

He logged another event on February 12 and again on February 13. He called the police early in the morning of February 13. The police said they would send a car to warn the tenant in 904.

On February 14, 2016 the tenant provided his log of incidents up to February 13, 2016 to the landlord. On or about March 7 he provided the landlord with an updated log to include an incident on March 7 when he heard excessive noise, yelling and arguing from 904.

The landlord wrote the tenant on March 11, saying it was investigating the tenant's "recent complaint."

The landlord wrote to the tenant in 904 on March 12 saying that despite previous conversations the landlord continues to receive complaints from "other tenant's [sic]" who were disturbed by noises from her unit. The letter told the tenant in 904 to take the letter seriously or her tenancy may be in jeopardy.

The tenant continued to log disturbances from 904 over the evening of March 18 into the early morning of March 19 and again in the afternoon of March 19. He sent the revised log to the landlord.

On March 25 the landlord wrote to the tenant assuring him that the "incident" he described "has been investigated" and that due to privacy issues the actions the landlord was undertaking could not be told to him.

In a further supplement to his log he recorded excessive noise from the tenant in 904 and her visitors on March 23 and 25. On March 27 he logged that there was excessive noise from 904, loud music and arguing and that a visitor to 904 was knocking on other tenants' doors. He logged further disturbances on April 1, 9, 15. On April 15 he called the police again and they sent policemen over to the building.

On May 13 the tenant received a letter from the landlord recommending that he pursue his complaints with the Residential Tenancy Branch.

On July 16 the tenant provided the landlord with an updated log of events recording incidents of noise from 904 on July 15 and 16 and during which he called the police three times to deal with the excessive noise from the tenant in 904.

On July 18 he reported an additional later that occurred later on July 16 and for which the police had been called a fourth time.

On July 23 the tenant reported to the landlord an incident on July 22 when the police were called once more.

Shortly after that the tenant saw a one month Notice to End Tenancy on the door of 904.

In addition to the log and various supplements the tenant provided, he also adduced copies of the police records he had applied for and obtained. They disclose perhaps 29 calls between August 2015 and February 13, 2016.

None of the police reports indicate that the disturbance was occurring by the time they arrived at the building. The tenant explains that the tenant in 904 has watchers outside who call her whenever police arrive at the building, permitting her to quieten down in time. He has told the police that the tenant in 904 had listening devices with which she could determine when he was calling the police.

On more than one occasion the police arrived at the building as a result of the tenant's complaint but could not get in the front door because the tenant was not answering his phone.

The tenant says that he had a "settlement agreement" with the landlord in regard to disturbances he suffered through in another rental unit he had previously occupied. He indicates that the agreement was that the landlord would move him to his present rental unit, a unit set apart from the others in the building, and that the landlord would only rent the one adjoining rental unit to quiet people. He says the landlord has breached that settlement agreement and that he should be awarded damages as a result.

Mr. C. for the landlord takes the position that there was no settlement agreement with the tenant about his previous rental unit. He says the tenant and another person had a "social conflict" and the landlord resolved it by moving the tenant.

He considers that the tenant's complaints are without substance. The police reports show that there were no disturbances when they attended.

He opines, as did the police, that the tenant has mental health issues.

He says no one else complains about 904.

Mr. C. says that there is no on site manager at the building during the evening or on weekends. It is his expectation that tenants call the police and that in order to pursue a complaint with the landlord the complaining tenant must obtain the police report and report the complaint to staff during working hours.

In response the tenant acknowledges that he was diagnosed with bipolar disorder in 2001, that he is properly medicated that it does not impair his ability.

He admits that the tenant in 904 was given a one month Notice to End Tenancy for cause in July. She did not dispute the Notice but did not move at the end of August either, as the Notice required her to do. The landlord applied for and received an order of possession on November 4, 2016. The tenant in 904 attended that hearing and opposed the application. The Residential Tenancy file number for that dispute is recorded on the cover page of this decision.

Analysis

The evidence does not prove that there was any “settlement agreement” of any kind with the landlord or that any such agreement has been breached. That aspect of the tenant’s claim is dismissed.

The landlord is not at liberty to claim the tenant’s allegations of disturbances are without substance. The record of the landlord’s application for an order of possession against the tenant in 904 shows that the Notice in question in that proceeding alleged, among other things, that the tenant in 904 had significantly interfered with or unreasonably disturbed another occupant. In support of that allegation the landlord filed this tenant’s log of disturbance incidents as proof of those allegations. It cannot now simply disavow that evidence.

Given that the landlord’s letters to this tenant show that it had investigated his complaints and as a result of that investigation had written warning letters to the tenant in 904 and later had filed this tenant’s own logs to prove its allegations, it cannot now tack around to disclaim them.

Indeed the record for the other proceeding shows that on March 12, 2016 the landlord sent the tenant in 904 a letter warning her that “others” (not just this tenant) were being disturbed by the noise emanating from her suite; the yelling and banging through all hours of the evening and early morning. It cautioned her to take the letter seriously or her tenancy could be in jeopardy.

That record shows that on March 23, 2016 the tenant in 904 was again sent a letter warning her that complaints had been received from other tenants (not just a single tenant) about the noise from her suite and that it could put her tenancy at risk.

Again on May 20 the landlord wrote to the tenant in 904 that it had received complaints from other residents” (not just a single resident) about her “unacceptable behaviour” of “continuous noise coming from your unit at all hours of the day and night” and that further complaints may result in the ending of her tenancy.

That record shows that once more, on July 11, the landlord wrote to the tenant in 904 about complaints from other residents regarding unacceptable noise coming from her suite at all hours of the day and night and that further complaints would result in the ending of her tenancy.

That record also shows the landlord's photographs of the inside of rental unit 904. The floor and furnishings are scattered with used syringes. There are discarded condom wrappers lying about and a photo of a drawer containing perhaps two dozen wrapped condoms. This evidence, filed by the landlord in a related proceeding, corroborates this tenant's allegations that the tenant in 904 was carrying on the business of a prostitution in her rental unit.

The one month Notice to the tenant in 904 was dated July 25, 2016, with an effective date of August 31, 2016. That tenant did not dispute that Notice. As a result, the tenancy in 904 ended August 31 by operation of s. 47 of the *Residential Tenancy Act*.

The tenant in 904 did not leave at the end of August. The landlord waited until September 14 to make an application for an order of possession and the order was granted at the hearing on November 4.

I accept the evidence contained in the tenant's log records about the extent and frequency of noise coming from 904.

However, the person directly responsibly for any disturbance resulting from the noise is the tenant in 904, not the landlord.

A landlord can only become responsible for the unreasonable disturbance or significant interference of one tenant by another if the landlord is notified of it and fails to take reasonable steps. Those reasonable steps are to consider the complaint and if appropriate, investigate the complaint. If the landlord reasonably determines that the complaint is well founded it then has the obligation to take reasonable steps to prevent its reoccurrence. Those steps might be a warning or a Notice to End Tenancy, depending on the circumstances.

In this case the landlord did investigate the tenant's claims and determined that a warning letter was appropriate. In my view that was not an unreasonable course of conduct in the circumstances.

However, there were repeated complaints after the warning letter of March 12, 2016. Instead of a more serious response, the landlord continued to issue what were virtually the same warning letters. It sent the tenant of 904 three more warning letters for the same repeating conduct over a four month period culminating in the Notice to End Tenancy issued near the end of July.

I find that this was not a reasonable response by the landlord. I find that the landlord unreasonably delayed taking appropriate eviction steps against the tenant in 904 for a four month period; April to July.

Had the landlord taken reasonable and appropriate steps, a Notice to End Tenancy would have been issued against the tenant in 904 by the end of March, to end her tenancy April 30, 2016. I find the landlord is responsible to this tenant for the unreasonable disturbance and significant interference he experienced as the result of the noise from 904 after April 30, 2016 to the date of this application, September 6, 2016.

The evidence shows that the tenant logged disturbances by excessive noise from 904 on June 16 and 18. He called the police on both occasions. In July he reported a stream of four disruptions and four police calls over a two day period July 15 and 16. On July 22 he logged another incident of disturbance and a call to the police. I find that had the landlord taken reasonable steps to deal with this tenant's complaints, he would not have suffered those disturbances on those days.

The tenant gave little evidence about the nature of the noise on those days. The frequency or amplitude of the noise was not described. He did not record the sounds. He says he does not have a cellphone or other recording equipment. Nevertheless, I find that the noise was sufficiently disturbing to cause him to call the police.

It should be noted that I proceed with caution in assessing damages for the disruptions the tenant experienced. While I find that they did occur, the tenant's evidence about them must be viewed rather critically. He has filed as evidence and seeks compensation for the cost of a private investigator report. The report is clearly not from a private investigator. There is no date or signature on the report. The tenant declined to provide this information at hearing, or any information that would have permitted authentication of the document. It is likely that the tenant has manufactured this evidence in an effort to bolster the effect of his complaints to the landlord.

In all the circumstances I consider a general award of damages in the amount of \$300.00 to be appropriate for the disturbance caused by the tenant in 904 over the period May to the end of July and I award that amount to the tenant.

The tenant's claim for recovery of the private investigator fee is dismissed.

The tenant claims recovery for office supply purchased and consumed in this dispute resolution process. It is my understanding that fees and disbursements so incurred are not within an arbitrator's power to award. That power is limited to the awarding recovery of any filing fee. No filing fee was paid for this application.

The tenant's monetary order worksheet contains a claim for "data entry fees." These would appear to be for work the tenant himself performed in compiling material related to his claim. No evidence was given about the fees. I find them to be in the nature of fees and disbursements and therefore outside an arbitrator's powers to award.

Conclusion

The tenant's application is allowed in part. He will have a monetary order against the landlord in the amount of \$300.00.

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: November 15, 2016

Residential Tenancy Branch