Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M. A. Cedar Place Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and for an order that the landlord comply with the *Act,* regulation or tenancy agreement.

Both tenants attended the hearing and each gave affirmed testimony. An agent for the landlord also attended but did not testify, and the landlord was represented by legal counsel. The landlord also called 1 witness who gave affirmed testimony. The parties agreed that all evidentiary material has been exchanged, and were given the opportunity to question each other and the witness. All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment of the rental unit?
- Have the tenants established that the landlord should be ordered to comply with the *Act,* regulation or tenancy agreement, specifically with respect to quiet enjoyment and the fixed term?

Background and Evidence

The first tenant (SW) testified that this fixed term tenancy began on March 1, 2014 and expires on February 28, 2019 at which time it reverts to a month-to-month tenancy. The tenants still reside in the rental unit. Rent in the amount of $2,058.00 per month is currently payable on the 1st day of each month in addition to $40.00 per month for parking, and there are no rental arrears. A move-in condition inspection report was not completed by the parties at the beginning of the tenancy, and a copy of the tenancy agreement has not been provided for this

hearing. The rental unit is an apartment in a complex containing about 12 units, and the landlord's agent does not reside there.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $2,000.00 which is still held in trust by the landlord. The landlord has a copy of a tenancy agreement showing that amount crossed out and replaced with $1,000.00, but that's not what's on the tenants' copy.

The tenant further testified that the rental building was sold on June 23, 2015 to the current landlord company. The parties have been to previous Arbitration hearings, the first of which was on November 9, 2016, which concerned the landlord's application for an Order of Possession and the tenants' application for an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property. The notice was cancelled at Arbitration. A hearing on December 28, 2016 dealt with another application by the landlord for an Order of Possession for unpaid rent or utilities and the tenants' application for monetary compensation for damage or loss. The notice to end the tenancy was cancelled. Copies of the Decisions have not been provided for this hearing.

The tenant further testified that the landlord's property manager has been very aggressive and harassing the tenants. He told the tenants that they had to give up their parking spot, which ended up in a heated argument, and said that he's doing what the landlord told him to do, and that the tenants have to leave even before any notice to end the tenancy was issued. That happened at least 3 times. The landlord is still demanding that the tenants owe $480.00 for parking, but the tenancy agreement says it's $40.00 per month and it's always paid with the rent.

When the Tenant's Application for Dispute Resolution was filed, the landlord had made 3 attempts to illegally evict the tenants. The tenant is 6 months pregnant and her staff had noticed that the tenant was ill.

The tenant further testified that the landlord's witness is the landlord's accountant, and they demanded that the tenants pay back-rent on December 21, 2016 which was part of an upcoming hearing. They also demanded arrears of parking, but that had been paid to the previous owner. They thought it was funny, but the tenant was emotionally distraught and crying.

The last hearing concerned a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities, and the tenants feel it was an attempt by the landlord to over-ride the tenants' application for compensation. Rent cheques had been held from July to October, 2016 and the landlord didn't cash them until after the November 9 hearing after the tenancy was upheld. Further, the landlord cashed all but the August rent cheque in order to claim that the tenants didn't pay rent and gave the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant also testified that the common area hallways are filthy with bugs, dust, cob webs and generally an unsafe environment, and photographs have been provided. After filing this application the landlord had it cleaned on January 11, 2017 but there had been no cleaning prior.

The tenants' claim is $25,000.00 for 18 months of loss of quiet enjoyment for the owners and property managers wrongfully contacting the tenants and issuing notices to end the tenancy.

The second tenant (CB) testified that the landlord's property manager told him that the owner has lots of relatives who could take over the rental unit. It is a 450 square foot apartment that the tenants take pride in, with a beautiful patio overlooking the ocean. Since new owners have taken over, they keep trying to evict the tenants, tried to take away the parking stall, and mentions it even when running into the property manager in the hall.

It's been a constant education to the tenants for the last year and a half. It's not a home; they are afraid that the landlord might put a lock on the door. The tenants are living in fear from the landlord saying things like, "Where is your parking money?" and, "You're being evicted." The tenants allowed the property manager onto the patio of the rental unit to deal with a leak in another unit, but he took it as an opportunity to yell at the tenants. The property manager doesn't know how to speak at a normal level; he's scary, and talks about the tenants' friends.

While the tenants were on vacation in August, 2016 the landlord emailed the tenants asking for the keys to take over the rental unit and do a final inspection. It totally ruined the vacation; the tenant was shocked and called the Residential Tenancy Branch. There had not been any notice to end the tenancy by either party, and it was just a manipulated tactic.

The landlord wants the tenants to move out in order to increase rent for new tenants and have disrupted the tenants' right to quiet enjoyment continuously. Also provided is a letter from a previous tenant in the rental complex stating that the landlord had unlawfully evicted that tenant, and coerced the tenant into moving out. It also states that after moving out, the writer saw the rental unit advertised at $325.00 per month more than the tenant had been paying.

The tenants have also provided other letters and emails sent to the landlord complaining of poor treatment and disturbing encounters dating back to June, 2016.

The landlord's witness testified that he is the landlord's accountant and has seen 2 tenancy agreements showing a security deposit of $2,000.00 and $1,000.00. The $1,000.00 security deposit was the amount of the adjustment at the time the building was purchased and on the contract that the witness received from the lawyer.

The witness also went to the rental unit with the landlord's agent on December 5, 2016 to collect rent and parking fees.

The common areas of the rental complex are cleaned every 10 days. He testified that the photographs provided for this hearing are typical for the maintenance of the halls being "normal and clean." The witness is at the rental complex sometimes once per month or more.

Analysis

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

The first hearing was held on November 9, 2016 which dealt with an application by the landlord for an Order of Possession for landlord's use of property and for a monetary order for unpaid rent, as well as the tenants' application for an order that the landlord comply with the *Act,* regulation or tenancy agreement. The Decision is dated November 10, 2016 and the Conclusion portion states:

> "The tenants are currently in a fixed term tenancy that will end on February 28, 2019. The landlord may not end the tenancy with a two-month notice to end tenancy for landlord's use until that date. The landlord's application for an order of possession is dismissed with leave to reapply.
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> "I did not consider the landlord's application for monetary compensation, and that portion of their application is dismissed with leave to reapply.
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> "The tenants' application is also dismissed with leave to reapply. The tenants may also apply for monetary compensation."

The second hearing concerned an application by the tenants for an order cancelling a 10 day Notice to end tenancy for unpaid rent and utilities issued on November 9, 2016 and compensation for damage or loss under the *Act,* as well as the landlord's application requesting compensation for unpaid rent and parking fees and an order of possession based on unpaid rent. The Arbitrator ruled that the tenants' application for monetary compensation and the landlord's application for monetary compensation for parking were not sufficiently related to the issue of unpaid rent, and both were dismissed with leave to reapply. The Decision is dated December 28, 2016 and the Analysis portion states, in part:

> "Based on the testimony of the parties and the balance of probabilities, I have relied on the tenants' testimony as the most reliable. The tenants had direct knowledge of having placed the August rent payment in with the July, 2016 rent payment. I found their testimony believable and consistent. The landlord's solicitor could not say with any confidence that the cheque had not been received.
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> "A tenant cannot be placed in the position of possible eviction as the result of a cheque that may have been misplaced by the landlord. Therefore, I find that the landlord has

> failed to prove that August 2016 rent has not been paid. I find it more likely than not that the landlord received the cheque and that the landlord has not, for whatever reason, cashed that cheque. As a result, I find that the 10 day Notice to end tenancy for unpaid rent issued on November 9, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act."

The Conclusion portion states:

> "The 10 day Notice to end tenancy for unpaid rent issued on November 9, 2016 is cancelled.
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> "The tenants are entitled to filing fee costs.
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> "The landlords' application requesting an order of possession and a monetary order for unpaid rent is dismissed.
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> "The tenants have leave to reapply on the balance of the application.
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> "The landlord has leave to reapply in relation to any parking fees."

I refer to the Residential Tenancy Branch Policy Guidelines, which explain that an arbitrator may award aggravated damages. "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. An arbitrator does not have the authority to award punitive damages, to punish the respondent. If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant."

I have also reviewed all of the evidentiary material of the parties, including the photographs and email messages.

The rental unit is the tenants' home, and the *Residential Tenancy Act* requires landlords to provide tenants with quiet enjoyment of their home:

> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
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> (a) reasonable privacy;
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> (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant testified that in August, 2016 the landlord emailed the tenants asking for the keys without any notice to end the tenancy being given by either party. The landlord did not dispute that. Then the landlord gave a 2 Month Notice to End Tenancy for Landlord's Use of Property claiming that the tenants had changed the fixed term on the tenancy agreement, which was not the finding at Arbitration. I also note that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued the same day as the first hearing, and the Arbitrator at the second hearing made a finding that the rent had been paid and that perhaps the landlord misplaced it. I also must consider the letter of a previous tenant who wrote that the landlord coerced the tenant to moving out and then found an advertisement for the same rental unit at a higher rate of rent. That too was not disputed.

I accept the testimony of the tenants that the landlord has caused the tenants to suffer damages as a result of the continued badgering by the landlord's property manager. I question why the property manager, who has been mostly the subject matter of these disputes, was not called as a witness by the landlord, leaving me with little choice but to accept the testimony of the tenants that the property manager continues to yell at the tenants and find a way to evict them for the landlord. The tenants continue to live in fear of being evicted, being yelled at and that the landlord may go the extra extreme of changing locks. That is not quiet enjoyment of the rental unit, and I order the landlord to comply with the *Act* by refraining, and by ordering the property manager to refrain from having any contact with the tenants except for the purposes of paying rent, properly dealing with repairs and other issues under the *Residential Tenancy Act*.

In the circumstances, I find that the tenants have continuously suffered damages as a result of the landlord's failure to provide the tenants with their right to quiet enjoyment. However, I find that the amount claimed is extreme. The tenants have had a roof over their heads, and I find that a portion of rent paid from August, 2015 to December, 2016 is justified. Rent is currently $2,058.00 per month with no rental arrears and the tenants have resided in the rental unit since March 1, 2014. I find that the damages suffered by the tenant amounts to a quarter of the current rent payable, or $514.50 per month from August, 2015 to December, 2016, totalling $8,746.50.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the $100.00 filing fee.

I order that the tenants be permitted to reduce rent for future months until the total amount of $8,846.50 has been realized, or may otherwise recover it.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with the *Residential Tenancy Act* by refraining, and by ordering the property manager to refrain from having any contact with the tenants except for the purposes of paying rent, properly dealing with repairs and other issues under the *Residential Tenancy Act*.

I further grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $8,846.50, and I order that the tenants be permitted to reduce rent for future months until that sum has been realized or may otherwise recover it.

This order is final and binding and may be enforced.

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: February 10, 2017

Residential Tenancy Branch