



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

RS appeared on behalf of the landlord and had full authority to do so. All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's Application for Dispute Resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2009. Monthly rent is currently set at \$388.88, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$187.50.

The tenant submitted a monetary claim for \$756.50 for the loss of quiet enjoyment due to the landlord's failure to address issues between the tenant and other tenants in the building. The figure is equivalent to approximately 25% of the monthly rent for the months of November 2016 through to June 2017.

The tenant and his advocate testified in the hearing that the tenant has lived in this 16 unit apartment building for many years, and received a 1 Month Notice to End Tenancy for Cause ('1 Month Notice') in August of 2016. The landlord agreed to withdraw the 1 Month Notice in October 2016, and the tenancy continued.

The tenant has an ongoing relationship with another tenant S, since November 2016 which involved intimidation, bullying, and threats. The tenant testified in this hearing that the police have been called 8 to 9 times, but nothing was ever done. The tenant testified that he did not feel safe, and the landlord has failed to act on his concerns despite the letters that he sent to the landlord. The tenant testified that instead the landlord attempted to end the tenancy by giving him the 1 Month Notice.

The tenant included in his evidence a letter dated February 27, 2017 requesting that the landlord take action by addressing the behaviour of the other tenant S. It was undisputed by all parties in this hearing that the tenant had his wheelchair locked, which required the assistance of the landlord to unlock. It is unknown who was responsible for this incident, although the tenant attributes it to S, or another tenant in the building. This is the second letter submitted by the tenant, the first dated November 7, 2016 which expressed the tenant's concern about S who threatened the tenant and his partner by stating that "I'm going to kill you". The tenant wrote in the letter that the police were called many times, and that the tenant was concerned for his safety due to the level of aggression. The tenant requested, in his application, for an order for the landlord to comply with the Act, regulation, and tenancy agreement. The tenant believed that the landlord failed to protect the tenant's right to quiet enjoyment, and wanted an order for the landlord to do so. The tenant felt that his past rent should be reduced because of the landlord's failure to provide this service to the tenant.

The landlord's agent RS is the resident caretaker for the building, and testified in this hearing that it was the tenant who antagonized S, and that the tenant was involved in at least one police

incident in 2016. RS testified that the tenant and his partner would get drunk and harass other tenants in the building. RS testified that the tenant was the problem tenant, and that the tenant would threaten other tenants and himself.

The landlord submitted in their evidence a letter from the tenant, dated January 4, 2011, which the landlord's agent testified was threatening in nature. The tenant stated in the letter that "L is and has been a thorn in your side for quite some time and don't ignore this. It's not going way. If you do nothing about this problem I will be forced to speak with L and L at A to have some changes done around here. You do not want me to do this. They will probably move you to the S. Do I make myself clear? I will be home around 4pm today. I will expect an answer from you. I do not want to go to the next level because I like you guys. Don't humour me. This is becoming quite serious now. Pay attention you have a lot to lose. Is she worth it? You better think about this. See you soon."

RS testified that he responded to all parties by talking to them, as well as the police. RS testified that there were over 100 911 phone calls from the tenant, which the tenant disputes. RS included a statement in his evidence that the police have spoken to the tenant and advised them they would no longer attend unless someone's life was in jeopardy.

Analysis

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance...

I have considered the testimony of both parties, and while the tenant had provided testimony to support that he was harassed by other tenants in the building, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill their obligations as required by section 28 of the *Act* as stated above. The landlord disputed the tenant's testimony, and provided written and oral testimony to support that the tenant was a party to the ongoing aggravation amongst the tenants in the building, including numerous 911 phone calls to the police, and threats towards the manager himself.

The landlord's agent testified in the hearing that he attempted to address the problem by talking to the tenants and the police, and it was undisputed in this hearing that no criminal charges have arisen out of these incidents. It was also undisputed that no party was found responsible for the incident where the tenant's wheelchair was found locked. I find that the manager assisted by unlocking the tenant's wheelchair, and I accept the manager's testimony that he attempted to address the situations by liaising with the police.

Although the tenant may very well have been harassed by other occupants in the building, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. I find that the landlord had complied with the *Act*, and have attempted to address the situation by speaking to all parties and the police.

I also find that there is evidence to support the landlord's testimony that the tenant's history of threatening behavior towards others may have contributed to the tenant's loss of quiet enjoyment. On this basis, I am dismissing the tenant's monetary claim for the loss of quiet enjoyment as a result of the landlord's failure to comply with the *Act*, as the tenant did not provide sufficient evidence that this loss of quiet enjoyment was the result of the landlord's actions or failure to act. As the tenant did not provide sufficient evidence to support how the landlord failed to comply with the *Act*, regulation, or tenancy agreement, I dismiss this portion of the tenant's application.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." The tenant applied for a reduction of rent for repairs, services or facilities agreed upon but not provided. As stated above, I find that the tenant did not provide sufficient evidence to establish that the landlord failed in their obligations as a landlord, or how the tenant was not provided repairs, services, or facilities as agreed on for this tenancy. On this basis, this portion of the tenant's applications is also dismissed.

Conclusion

The tenant's entire application is dismissed.

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 1, 2017

Residential Tenancy Branch