



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. The tenant testified that he served the hearing package, which included notice of this hearing, by personally handing it to the landlord on November 27, 2017. I accept that testimony, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Should the One Month Notice to End Tenancy for Cause be cancelled?
- Has the tenant 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 loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this tenancy began at the end of July, 2017, after the tenant had been moved from a Hotel by the landlord, and the tenant still resides in the rental unit. Rent in the amount of \$375.00 per month is paid directly to the landlord by a government Ministry and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of half of the rent payable per month, which is still held in trust by the landlord, and no pet damage deposit was collected. The

rental unit is a single room in a complex. The tenant believes there is a written tenancy agreement, however the tenant has not provided a copy for this hearing.

The tenant further testified that on the 17th or 18th of November, 2017 the tenant was personally served with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated November 16, 2017 and contains an effective date of vacancy of December 31, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant also testified that since moving into the rental unit, the tenant's sleep has been disturbed at least 50 times by a tenant residing in a unit above who stomps and makes other noises that the tenant cannot describe. Also, an employee of the landlord continuously yells at people and verbal fights ensue between him and other tenants or people trying to get into the rental complex without identification. The tenant has asked the landlord and other employees of the landlord, including security personnel, to do something about it but they all say it's not their job. The tenant also spoke to the neighbour in the unit above the tenant's rental unit, who agreed to reduce noise, but the noise continues. The tenant has lost 2 job opportunities as a result of lack of sleep, and can't even get temporary jobs. The tenant was awoken 7 times last night by staff yelling at someone. The tenant also takes strong medication to assist with sleeping an anxiety and wears ear plugs, but is still awakened by the noises.

The tenant also testified that all the landlord does is give the run-around and lie, and other tenants have also complained of that. The landlord told the tenant he would move the tenant to another unit, but hasn't done so. The landlord doesn't try to stop the noises and told the tenant that it's easier to get rid of the tenant than to deal with the problem, and that it would be in the tenant's best interest to move out comparing it to a hockey penalty – in essence that the tenant should take one for the team. It's affecting the tenant's health.

The tenant has claimed \$500.00 in damages but testified that it could be more if the tenant had calculated the job losses.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act* which can include the reason(s) for issuing it. In this case, no one has appeared for

the landlord or provided any evidentiary material, and I find that the landlord has failed to establish that the notice was given in accordance with the *Act*. Therefore, I cancel the notice, and the tenancy continues.

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I accept the undisputed testimony of the tenant that the noise that prevents the tenant from sleeping at night is either caused by the landlord's employees or other tenants. I also accept that the tenant has spoken to the landlord, employees and security personnel of the landlord, and a neighboring tenant without results. A tenant is entitled to quiet enjoyment of a rental unit, and I find that the tenant has established elements 1, 2 and 4 of the test for damages. With respect to element 3, I have no evidentiary material to provide me with information of how much the tenant has lost in wages due to the loss of quiet enjoyment. However, the *Act* permits an award of nominal damages or aggravated damages, which are described in Policy Guideline 16:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In the circumstances, I find it appropriate to order the landlord to comply with the *Residential Tenancy Act* by providing the tenant with his right to quiet enjoyment effective immediately. If the landlord fails to comply the tenant will be at liberty to apply for further monetary compensation. I also find it appropriate to grant an award of nominal damages in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated November 16, 2017 is hereby cancelled and the tenancy continues.

I further grant a monetary order in favour of the tenant as against the landlord in the amount of \$100.00 pursuant to Section 67 of the *Residential Tenancy Act* and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

I also order the landlord to comply with the *Residential Tenancy Act* by providing the tenant with his right to quiet enjoyment of the rental unit effective immediately. If the landlord fails to do so the tenant will be at liberty to apply for further monetary relief.

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: December 27, 2017

Residential Tenancy Branch