



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIUMPH MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, RR, CNC, FF

Introduction

The tenant applies for an order that the landlord comply with the law or the tenancy agreement. Under that claim he appears to make a monetary demand for “loss of quiet enjoyment” claiming harassment by the landlord’s maintenance man who lives below him.

The tenant also seeks a repair order, however, as I understand it, by the second hearing day of this matter, all repairs had been done and so there is, presently, no need for such an order.

The tenant also seeks a rent reduction for: a) a failed front door buzzer, b) loss of bathroom facilities, and c) for “loss of quiet enjoyment” due to the harassment mentioned above.

By amendment, the tenant seeks to cancel a one month Notice to End Tenancy for cause dated May 31, 2018. At the first hearing of this matter that Notice was withdrawn by the landlord.

The listed parties attended the hearing 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.

At hearing the landlord’s representative Mr. G.M. argued that the tenant’s claims had been resolved in previous hearings.

Issue(s) to be Decided

Have any of the tenant’s claims been resolved or otherwise dealt with in earlier proceedings? If not, has the landlord committed the actions alleged by the tenant and If so, has it been in breach of the law or the tenancy agreement and, if so, what, if anything, is a proper measure of damages or appropriate remedy?

Background and Evidence

The rental unit is a two bedroom apartment in a three storey, 35 unit apartment building. The building is of wood frame construction built about 70 years ago.

This tenancy started in June 2014. Currently the monthly rent is \$1100.00. The landlord holds a \$600.00 security deposit.

The tenant has a roommate: Mr. S.D., who attended the July 12 hearing and gave evidence.

Harassment

The tenant lives directly above Mr. D.P. and his partner Ms. J.Mcl. Mr. D.P. is also on the landlord's maintenance staff at the building. The tenant says that Mr.D.P. is a threatening, aggressive, homophobe who has continually harassed the tenant by: accusing him of causing plumbing leaks, accusing him of permitting visitors to throw rocks at the tenant's window, threatening that a bailiff will throw him out, threatening to call the police on the tenant, calling him a f***ing idiot," threatening to kill the tenant and accusing the tenant's friends of being drug dealers and criminals.

He says that things were better while Mr. D.P. was in jail for two months earlier this year.

Buzzer

The tenant testifies that in January 2017 the buzzer apparatus in his apartment stopped working "with his phone." As I understand it, a visitor comes to the door of the building, buzzes the tenant's apartment number and the tenant presses "9" on his phone to unlock the door. It is not clear whether the system is intended to work with the modern cellphone.

The tenant says that he reported the buzzer problem verbally but it was not fixed until June 2018.

Bathroom

The tenant testifies that at the end of February 2018 the water to his tub and bathroom sink were turned off. They were not repaired until June 1, 2018.

Other

During his testimony the tenant averred that there was a bug problem in his suite, however such a claim was not clearly set out in his application and so I decline to deal with it. He also testified that his stove quite in April 2018 and the landlord's repairs failed twice. A replacement stove was provided on June 12. Again, this claim was not referred to in the application and so I decline to deal with it.

In response the building manager Mr. DeG. testifies that Mr. D.P. does not have authority to evict anyone. He says that the tenant has been disturbing others in the building, including Mr. D.P. below, by having guests late at night and in the early morning hours, who arrange entrance to the building by tossing pebbles up at the tenant's window to awake him or attract his attention. In his view the visitors are often of sketchy character and likely involved in the drug trade. They stay for only a few minutes each visit. On one occasion he confronted a person tossing pebbles at the tenant's window late at night. He says the person told him the tenant had directed him to make contact that way. Mr. DeG. called the police, who attended and directed the person off the property.

In regard to the buzzer, Mr. DeG. says that once reported by the tenant he turned it over to a repairman and heard nothing more about it. He says that on April 16 of this year he saw a guest of this tenant successfully operating the buzzer system. He remembers it because it was his birthday that day.

It appears that Mr. D.P. was in the habit of complaining about the noise coming from the tenant's rental unit above, particularly during the night. As the tenant's roommate stated "five minutes of sex and (Mr. D.P.) would be punching the walls." As well, he complained about dirt falling onto his balcony from the tenant's. The tenant noted that dirt could not fall directly onto Mr. D.P.'s balcony.

Ms. Mcl., Mr. D.P.'s partner, testified that she has seen people tossing "rocks" up at the tenant's window late at night. She says that in April 2018 a chunk of brick shattered her bedroom window.

Mr. D.N., another tenant in the building testified confirming the fact of the tenant's late night visitors. He has seen visitors tossing stones up at the tenant's window and having the key dropped down to them to let them in.

Mr. G.M. for the landlord points to an earlier application made by the tenant for virtually the same relief as this application (related file shown as first file on cover page). In that matter the tenant applied to cancel a one month Notice to End Tenancy for cause (as here, it was withdrawn by the landlord), for a compliance order, a repair order and a rent reduction.

At that hearing the parties settled the matter. The decision, dated February 9, 2018 states that "with the consent of the Landlord, the Tenant withdrew their (*sic*) application seeking a rent reduction for repairs, services or facilities . . . "

The settlement was stated as follows:

1. The agent for the Landlord agrees that the One Month Notice is withdrawn and that the tenancy will continue until it is ended in accordance with the *Act*;
2. The Parties agree that the Tenant will be temporarily relocated to another rental unit in the building in order for repairs to be completed in the bathroom of the Tenant's current rental unit;
3. The agent for the Landlord agrees to provide the Tenant with keys to the temporary rental unit no later than February 14, 2018, at 12:00 P.M.;
4. The agent for the Landlord agrees to allow the Tenant a reasonable amount of time to move their belongings from their current rental unit to the temporary rental unit and to provide a reasonable amount of assistance to do so;
5. The agent for the Landlord agrees to complete the required repairs and have the Tenant's rental unit ready for re-occupation by the Tenant no later than one month (30 days) after the Tenant has vacated the unit;
6. The agent for the Landlord agrees that the Tenant can deduct \$200.00 from their next month's rent in recovery of filing fees;
7. The parties agree that the Landlord's failure to abide by any of the conditions set out in this mutual settlement agreement will give the Tenant cause to file an application for dispute resolution seeking damages; and
8. The Tenant withdraws their Application in full as part of this mutually agreed settlement.

Mr. G.M. says the landlord upheld its end of this bargain and so this application should be dismissed. The tenant says the landlord didn't meet the 30 day deadline in paragraph 5. The landlord says the tenant never did completely vacate the unit.

Analysis

It is not clear from the previous decision February 9, 2018 that the arbitrator reserved to the tenant the right to bring his harassment, buzzer or bathroom monetary claims in a later proceeding. He was certainly advancing a monetary claim in that proceeding, though for a much smaller amount than in this application.

It is not clear what damages are contemplated in clause 7 of the February 9 agreement. Does the clause refer to damages that might result by the landlord's failure to abide by the settlement or damages generally for past transgressions?

There was an even earlier dispute resolution between these parties (second related file on cover page of this decision). As here, the tenant applied to cancel a Notice to End Tenancy for cause, for a compliance order regarding harassment by Mr. D.P. and for a repair order. The

decision dated October 25, 2017 shows that the tenant's claim was settled by the landlord withdrawing the one month Notice.

It is not clear that the arbitrator hearing the February 9, 2018 matter was aware of the settlement or was asked to consider whether the tenant's harassment claim had been dealt with by the October 25, 2017 proceeding settling it.

In the October 25, 2017 proceeding the tenant filed 55 pages of documentary evidence related mostly to support his claim of being harassed by Mr. D.P. For the February 9, 2018 hearing he filed the same 55 pages plus an additional 37 pages of documents. For this hearing he filed the same 55 pages relating to Mr. D.P. and the claim of harassment.

In my view an adjudicator should be slow to refuse parties an opportunity to have their disputes heard on the merits. However in this case the tenant has clearly advanced his claim regarding Mr. D.P. in the October 2017 proceeding and that matter was resolved by settlement. It is a principle of justice that a defendant should not have to face the same claim more than once.

I find that the tenant brought his harassment claim regarding Mr. D.P. in a previous application and it was resolved by settlement. He cannot pursue the landlord on the same facts in a later proceeding.

Turning to the bathroom and buzzer issues, in my view clause 7 of the settlement reached on February 9, 2018 foreclosed the tenant from claiming damage or loss for these items unless the landlord failed to uphold its end of the settlement.

In that regard the evidence is tangled. The landlord did provide another rental unit for the tenant to use. His roommate moved over but the tenant continued to inhabit or frequent this rental unit. It may have been that he did not trust Mr. D.P. who was apparently involved in the renovation work, to be in his rental unit. The landlord took much longer than 30 days to finish the work after providing the tenant with a replacement suite, but it is not clear whether that was because of the tenant's presence in the old rental unit or not.

In all the circumstances I cannot come to conclusion on a balance of probabilities about what likely happened and that the landlord failed to meet the settlement terms or that the tenant suffered any particular damage if it didn't. As a result I must find that the tenant has not proved that the landlord breached the settlement agreement.

Conclusion

The tenant's application for a monetary award (or rent reduction) for harassment is dismissed as having been previously dealt with.

This decision does not affect the tenant's right to pursue a claim for any harassment occurrence after the date his application was made (April 12, 2018)

The tenant's claim for monetary or rent relief relating to the bathroom and buzzer are 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 01, 2018

Residential Tenancy Branch