



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC

Introduction

The tenant applies for a compliance order regarding noise and disturbance caused by other tenants or their guests and for a monetary award for damage or loss claimed to have been suffered by the tenant due to the landlord's alleged failure to attend to those disturbances.

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.

Issue(s) to be Decided

Does the evidence show that the tenant has been unreasonably disturbed by other tenants? If so, has the landlord been duly notified and has it conducted itself reasonably to mitigate against unreasonable disturbance? If the landlord has breached its duty to the tenant, what, if anything, is reasonable compensation? Was the tenant under any duty to mitigate his loss by moving?

Background and Evidence

The rental unit is a bachelor suite in a three level converted motel. The tenant moved into the complex in 2015 but, apparently due to a conflict with a neighbour, he transferred into his present rental unit in June 2017.

There is a written tenancy agreement. The tenant's monthly rent is \$435.00. The landlord holds a \$375.00 security deposit.

The tenant claims that the peace and quiet of his rental unit has been repeatedly disturbed by the action of various tenants around him in the complex and by their guests.

He presents the notes kept by a previous tenant and by his advocate/assistant and neighbouring tenant Mr. J.B. of the occasions on which they were disturbed and, in Mr. J.B.'s case, when he made complaints to the landlord or when he called the police.

Unfortunately, the tenant is illiterate and was not capable of keeping his own notes of the occasions he complains of.

The tenant testifies that he is over 60 years old. He says people are sleeping in cars at the premises and selling drugs. There are people "banging" and noise from upstairs like someone pounding on something. He could hear "grinding" from another unit on occasion. The goings-on at the premises make it hard for him to sleep and he sleeps at a friend's place on occasion. He says the landlord does nothing about the ongoing disturbances. He says there are police lights flashing almost every night.

He says he tells the landlord of the problem all the time. He goes to the office in the morning. He has a phone in his room and calls the night workers or "mobile outreach workers" (MOWs) who don't attend with particular alacrity and never call him back. Unlike some other tenants at this location, the landlord has not made an effort to move him to quieter accommodations.

Mr. J.B. testifies and refers to his own records of complaints about noise and disturbance the times he has complained about him being disturbed. He also submits the lengthy notes of a former tenant who did not give evidence. Mr. J.B. reiterates the problems he has had with being repeatedly disturbed by the people in the rooms around his rental unit and people on the premises generally.

Mr. F. for the landlord adopts the written outline provided in this and in Mr. J.B.'s related dispute (file number shown on cover page of this decision).

It is the landlord's position that it provides "supported housing" for the destitute and that the tenant came to the landlord and this facility on that basis. The operation is run through BC Housing and is for individuals who need assistance. All prospective tenants, including the applicant, went through an assessment to determine that he or she has a mental health or addiction issue and thus qualified for this housing. Poverty alone is not a sufficient qualifier

The landlord's employees are all social workers or housing support workers dealing with the various issues the tenants of the premises might have. In large part the clientele are the homeless. Their issues are chiefly drug addiction and poor mental health. The office at the premises dispenses condoms, needles and "pipes" in a harm reduction effort.

It is the landlord's view that if any tenant is evicted they will likely end of living on the street and so the landlord is not eager to evict a tenant. Instead, the landlord's employees do all they can to deal with a tenant's "issues" before eviction.

It is the landlord's position that the office at the property is staffed during the day and that MOW's are available by phone after hours. They are also employees of the landlord and though not stationed at the property, they are mobile and can respond to complaints or problems within two hours. Anytime police attend the premises the landlord is contacted and so they have a record of police visits. Any tenant complaint is supposed to be documented and followed up.

He says that when the office in the complex is closed, all tenants have the number for the MOWs. On receipt of a complaint they follow up and if the complaint is justified they go through escalating remedies: written warning then eviction or relocation.

Mr. F. produced the landlord's records showing that the tenant has made three disturbance complaints to the landlord since taking up his present rental unit in June 2017.

The first complaint was in May 2018 concerning noise from a neighbour on the third floor. Mr. F. says the landlord's people responded to the complaint and spoke to the neighbour.

The second complaint was June 20, 2018 about a different neighbour playing music in the middle of the night. Mr. F. says the landlord followed up and spoke to that tenant.

The third complaint was July 2, 2018 when the tenant complained about a guest of the tenant identified in the first complaint doing "burn outs" on a motorcycle in the parking lot of the building and about noise from that rental unit. The landlord directed the offending tenant not to make noise overnight.

Analysis

Whereas in the decision involving Mr. J.B. it was necessary to address the issue of the landlord's responsibility in light of the fact it provides "supported living" housing, I need not address that issue here.

The basis of the tenant's claim is not that the landlord was causing unreasonable disturbance but that it has failed to take necessary measures to maintain the tenant's entitlement to freedom from unreasonable disturbance as required by the *Residential Tenancy Act* and by clause 13 of his tenancy agreement. In order for a landlord to meet that obligation it is vital that the tenant notify the landlord of any unreasonable disturbance in a timely manner so that the landlord can investigate and take steps to alleviate that disturbance. Sometimes those steps will result in an offending tenant being evicted.

The evidence provided by Mr. J.B. and the notes of the former tenant are certainly relevant to describe what other tenants may have undergone and, to a lesser extent, what the general activity is like around this complex. That evidence cannot fill in for what, in fact, has happened to this tenant. It does not follow that when another tenant in the complex is being disturbed by some particular noise or conduct then this tenant is also being disturbed.

I do not find the tenant's evidence about his general complaints to the landlord to be convincing. I note that at the time he made the first complaint, May 18, 2018, he told the landlord's staff member that he would not phone the landlord's overnight workers as he did not want to be seen as telling on people. He also testified that the landlord had made no attempt to move him to a quieter building, while the landlord's records show that between November 2016 and March 2017 the landlord arranged for the tenant to apply for and to move to subsidized housing. It appears the tenant is presently on the waiting list to be relocated.

I prefer the landlord's record of what complaints it received from the tenant. Those complaints are composed of two noise complaints about one tenant and a third about another. The landlord appears to have investigated the complaints and addressed them in a not unreasonable manner.

In such circumstances the tenant is not entitled to an order that the landlord be compelled to obey the *Act* or the tenancy agreement and he has not established a basis

for a monetary award against the landlord for breach of its obligation to keep him free from unreasonable disturbances.

Conclusion

The tenant's application must be dismissed.

It should be noted that this decision does not conclude that the tenant has not been unreasonably disturbed by other tenants or their guests. It decides that the tenant has not shown that he duly notified the landlord of the disturbances and that the landlord has failed to investigate and deal with the complaints in a reasonable manner.

This decision affects any disturbance up to the date of the tenant's application. Any incident after that, if brought to the landlord's attention in a timely manner, will give rise to the same obligation for the landlord to investigate and to take reasonable steps to maintain its obligation to provide to the tenant freedom from unreasonable disturbance. In those circumstances, if the landlord fails to do so, the tenant is free to make another application.

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: October 16, 2018

Residential Tenancy Branch