



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC

Introduction

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

- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement pursuant to section 62 of the *Act*, and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant testified that he served the landlord with the Notice of Dispute Resolution Proceeding and his evidence in person on October 30, 2018, which the landlord confirmed. The landlord testified that he served the tenant with his evidence on November 27, 2018, which the tenant confirmed. Based on the testimonies of the parties, I find that both parties were served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to comply with the *Act*, regulation, and/or tenancy agreement?

Is the tenant entitled to any monetary compensation as the result of the landlord's contravention of the *Act*, regulation, and/or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into documentary evidence. The parties confirmed their understanding of the following terms of the tenancy agreement:

- This month-to-month tenancy began February 1, 2013.
- Current monthly rent of \$511.00 is payable on the first day of the month.
- The tenant paid a security deposit of \$250.00 at the beginning of the tenancy, which continues to be held by the landlord.
- The rental unit consists of a park model manufactured home and the site upon which the home sits.

In this matter, the landlord of the tenant's rental unit and site is also the landlord of a neighbouring rental unit, which consists of a house on a site located adjacent to the tenant's site, and a lot adjacent to the tenant's site that was being used by the landlord for commercial purposes to store vehicles.

The tenant claimed that the resident of the house located adjacent to the tenant's site, herein referred to as C.B., was responsible for disturbing the tenant's quiet enjoyment of his rental unit.

The tenant submitted into evidence copies of seven letters that he had written to the landlord, one letter dating from March 29, 2017 while the rest are dated from September 18, 2018 to November 12, 2018, citing the following issues:

- "people slamming car hoods/doors, slamming the gate, people yelling, people coming and going at all hours of the nights and early morning"
- C.B. running a generator at night
- one incident of C.B. walking down the street at night yelling and later talking loudly with his friends back at his home
- two incidents of C.B.'s dog barking at night

The tenant provided verbal testimony that recently C.B. rode an ATV near the tenant's rental unit at night. The tenant testified that he has been in communication with the local police regarding his complaints pertaining to C.B. disturbing the peace, however police have advised the tenant that there is no noise control bylaw in the area where he lives and referred him to address the matter as a residential tenancy dispute. The

tenant testified that there was previous police involvement at C.B.'s residence due to drug activity. The tenant alleged that there was some type of explosion and a shot fired near the rental unit. The tenant expressed concerns that C.B. may be involved in vandalizing his property by loosing the lug nuts on his vehicle tires.

The tenant also stated that there are people living in a motorhome parked in the vehicle storage lot, and that these people are also disturbing the tenant at night.

The landlord confirmed that there is no noise control bylaw in the rural area where the tenant resides. The landlord testified that he has spoken with C.B. regarding keeping his dog in at night to address the issue of barking, and to the landlord's knowledge the issue of the dog barking has been addressed as a result. The landlord explained that if C.B. is causing a disturbance on the street, that is not the landlord's responsibility to address. The landlord testified that in November 2018 he issued a notice to end tenancy to C.B. due to non-payment of rent. However, C.B. paid the rent owed and the notice was cancelled.

Regarding the motorhome on the commercial lot, the landlord testified that he allowed the occupants to leave their motorhome in the lot until they could get it moved out. He stated that this is a temporary situation.

The tenant is seeking compensation of \$7,750.00 representing the return of half of his monthly rent for the past 31 months.

Analysis

The tenant is seeking monetary compensation for damages which he claims have been caused by the landlord's failure to comply with section 28(b) of the *Act*.

Section 28(b) of the *Act* provides that a tenant is entitled to quiet enjoyment, including the right to freedom from unreasonable disturbance.

Residential Tenancy Policy Guideline #6. Entitlement to Quiet Enjoyment provides further explanation of the criteria to determine a breach of quiet enjoyment, as follows, in part:

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the

landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In this matter, I find that the tenant has not provided any evidence to support his allegations that C.B. is responsible for vandalism to his property. As explained to the tenant during the hearing, concerns regarding alleged criminal activity or vandalism that damage his property or threaten his safety should be reported to the police as these are issues more appropriately dealt with through a law enforcement avenue. Should the tenant or landlord obtain sufficient evidence of illegal activity by C.B., section 47(1)(e) of the Act provides that a landlord may give notice to end a tenancy if a tenant has engaged in illegal activity on the property that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

I find that the landlord cannot be held responsible for C.B.'s disturbances that occur in public areas, such as along the roadway, as this again would be more appropriately addressed through a law enforcement avenue.

In the tenant's evidence, I find only two specific and dated complaints regarding C.B.'s dog barking on September 26 and October 21, 2018. The landlord testified that to his knowledge the issue of the dog barking at night had been addressed. The tenant's letter dated September 22, 2018 specified that he lost two nights of sleep due to disturbances caused by the occupants of the motorhome accessing the lot and shining flashlights at the tenant's windows. The landlord confirmed that this was a temporary situation and that the motorhome would be moved off the lot. The tenant has also cited the neighbour's running of a generator and riding an ATV near the tenant's rental unit at night as other sources of disturbance. The tenant did not provide specific dates and times of the neighbour riding the ATV at night or running the generator, so it is unclear if this was on one occasion or a regular occurrence.

I note that there is no witness statements or other corroborating evidence to support the tenant's testimony regarding his complaints. Further to this, there is no documentation submitted by the tenant to indicate the frequency or duration of these incidents in order to make a determination if they are frequent and ongoing, or if they are temporary and infrequent. There is no noise control bylaw in the tenant's area, however even if there

were, I find many of the noise sources referenced by the tenant to be on scale with acceptable noises experienced in urban areas subject to noise control bylaws.

Although all the issues referenced by the tenant demonstrate incidences of temporary discomfort or inconvenience to the tenant, I do not find, based on the evidence and testimony before me, on a balance of probabilities, that the tenant has provided sufficient evidence of “frequent and ongoing interference or unreasonable disturbances” to support the tenant’s claim that there has been a breach of his entitlement to quiet enjoyment.

Therefore, the tenant’s application is dismissed.

Conclusion

The tenant’s 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: December 27, 2018

Residential Tenancy Branch