Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR MNDCT

Introduction:
Both parties attended the hearing and gave sworn testimony. They confirmed that a 10 Day Notice to End Tenancy dated November 3, 2018 to be effective November 12, 2018 was served by posting it on the door on November 3, 2018. The tenant filed their Application on November 7, 2018 and served it by registered mail but the landlord said they never received it. A tracking number was provided and it showed that Notices were left for the landlord but the Application was not picked up. The landlord testified they received no Notices; one of the other tenants who use a common mailbox may have taken them from the mailbox.

The landlord said they received the Amendment filed on November 13, 2018 which added a monetary claim of the tenants. They said they got the hearing information from the Residential Tenancy Branch. I find the Notice to End Tenancy and Amendment were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing but the Application was not. I note that section 90 of the *Residential Tenancy Act (*the Act) provides that a document served according to section 89 of the Act which provides for registered mail is deemed to be received the 5th day after it was mailed. However, this is a rebuttable presumption. I find the landlord's evidence credible that they received no notices to pick it up so I find they did not receive the Application of the tenant.

I find the tenant filed the evidence for their Amendment only 4 days before the hearing. They said they filed this in reply to the landlord's evidence which was filed 6 days before the hearing and only received by them in their mailbox 5 days before the hearing. The landlord said they did not receive copies of the tenant's evidence. I find insufficient evidence that this evidence was served to the landlord.

Preliminary Issue:

I find there has been a history of significant conflict between these parties, some of it detailed in two previous files whose numbers are noted on the first page of this Decision. Both parties are concerned with the stress endured to date. I discussed with them the option of dismissing this application with leave to reapply, adjourning it to an unknown date or hearing their submissions and considering the evidence although it was out of time and/or not legally served. Both parties firmly requested that I hear the matter, consider the evidence submitted even if not served and make a binding decision. I note the cancellation of the Notice to End Tenancy for unpaid rent is no longer in issue as the parties have signed a Mutual Agreement to End Tenancy on January 1, 2019.

The tenant applies pursuant to the *Residential Tenancy Act* for orders as follows:

a) To cancel the Notice to End the Tenancy for non-payment of rent; the landlord has cancelled this Notice so it is no longer an issue.
b) By Amendment filed November 13, 2018 to obtain $4500 as compensation for the significant disturbance of their peaceful enjoyment contrary to section 28 of the Act; and
c) To recover the filing fee.

Issues: Is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that they are entitled to compensation and if so, in what amount?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on April 1, 2016 on a fixed term lease to April 30, 2018. The current rent is $1294.80. The tenant paid a security deposit of $600.00. The landlord served a 10 Day Notice to End Tenancy on November 3, 2018. There was dispute over an interact transfer which the landlord said was not received at first but they got confirmation from their bank that it was received on November 8, 2018. The tenant provided copies of emails of the e transfer to show it was sent earlier and the landlord was in error in not accepting it. However, the parties confirmed the Notice to End Tenancy dated November 3, 2018 is cancelled by the landlord and a Mutual Agreement to End Tenancy on January 1, 2019 was signed on November 27, 2018 (copy in evidence). The tenant alleged the landlord harassed them by not returning the signed copy until December 3, 2018 but the landlord said there was a problem with the form. I note the landlords had to change how their names were written on the form and initial them.

The tenant is pursuing a damage claim for $4500 against the landlord for the significant disturbance of their peaceful enjoyment since March 2018. They said the landlord

wanted to increase their rent and when they did not agree, they began to get Notices to End their tenancy for cause. The two Notices were disputed in the previous hearings noted on the first page of this Decision and the landlord was not successful in ending the tenancy. The tenants allege this is harassment and a significant disturbance of their reasonable enjoyment.

The landlord said they have tried to be accommodating. The tenants disputed a rent increase when no notice had been served; they later served a 3 month Notice of Rent increase. They said they are good landlords as evidenced by a letter from their other tenant who has been there 10 years without complaint. They note that this 10 year tenant has been significantly disturbed by the noise of the tenant's family. The landlord's state they have been deprived of peaceful enjoyment by the tenants' behaviour. They allege the tenants have filed a human rights complaint against them and called the Police on them when they went downstairs and knocked at 11:30 p.m. to ask the tenants to please stop the noise as it was disturbing them and the other downstairs tenant.

In respect to the tenants' video in evidence, the landlord said they had not seen it but from my description, the landlord said she was washing her small sundeck and some of the water went down below. However, she said they left a note the previous day informing the tenants and requesting they move any of their belongings from below while this was done. They said the tenants had only a towel and a second hand barbeque outside and the barbeque was moved back against the building and should not have suffered any damage. The tenants said there was no note left and the barbeque was damaged. They had bought it from a Restoration company for about $105. There were clothes outside as well as towels. They also had some other items like a Christmas tree and some bagged items. The landlord said the tree was not damaged as they are using it now.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. This is no longer in dispute and the Notice is cancelled pursuant to a Mutual Agreement to End Tenancy on January 1, 2019.

The remaining issue is the tenants claim for damages. I have considered all the evidence and oral submissions of the parties but only that relevant to my Decision is noted.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The tenant is claiming compensation of $4500 for the landlord's breach of their quiet enjoyment pursuant to section 28 of the Act. I find Residential Policy Guideline clarifies section 28 and compensation as follows:

Under section 28 of the Residential Tenancy Act (RTA) and section 22 of the Manufactured Home Park Tenancy Act (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

• reasonable privacy;

• freedom from unreasonable disturbance;

• exclusive possession, subject to the landlord's right of entry under the Legislation; and

• use of common areas for reasonable and lawful purposes, free from significant interference.

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. 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 determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss
A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.
A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The tenant alleges the landlord breached their right to quiet enjoyment firstly by claiming a rent increase (which they disputed) and also by serving them 2 Notices to End Tenancy for cause. I find the hearing in May 2018 found there was no formal Notice of Rent Increase so no notice to be cancelled. The two Notices issued in March were firstly based on a mistaken understanding of a fixed term lease which the arbitrator found reverted to a month to month and secondly for the cause of repeated late payment of rent which failed as the tenancy agreement did not specify a date for payment of rent. The arbitrator noted there was a considerable amount of acrimony between the parties possibly due to their lack of understanding of their rights and responsibilities under the Act. The arbitrator made some orders to be incorporated into and form part of their tenancy agreement. One order was that rent was payable on the 2nd of the month, another that the tenant must not unreasonably prohibit the landlord's entry to the unit, provided such entry is in accordance with section 29 of the Act. The landlord was ordered to remove all locks to the rental unit heat and that there was to be no smoking in the rental unit. Less than a month later, I find the landlord issued another

Notice to End Tenancy for cause alleging the tenants were creating a hazard by repeatedly causing the circuit breakers to 'trip' but they refused to have an electrical inspection to find out the cause of this.

While I find the landlord has the right to issue Notices to End Tenancy, I find the landlord is also expected to know their rights and obligations under the Act and apply them to the landlord and tenant relationship. I find the two Notices issued in March 2018 were the result of the landlord not completing the tenancy agreement correctly and then acting on incomplete knowledge. I find this stressed the tenants unduly as it was a threat to their tenancy. I also find those decisions ordered removal of locks from the rental unit's heat which indicated that the landlord had been violating the Act by removing control of heat from the tenant. I also note the arbitrator suggested the tenants might want to move due to the acrimony between them. In respect to the next Notice issued on June 11, 2018, I find the arbitrator found there was insufficient evidence to support the Notice and also that the tenants' inability to access their electrical panel to reset the breaker may negatively affect their quiet enjoyment. The arbitrator found the testimony of the landlord suggested the landlord was unaware of their rights and responsibilities.

I find the landlord's issuance of these three Notices to End Tenancy with insufficient evidence of good cause violated the Act and the tenants' right to quiet enjoyment from March 2018 to November 2018. I also find the weight of the evidence is that the landlord may have provoked a situation by washing their sundeck with the water raining down below. While I don't find sufficient evidence of any damage to the tenant's belongings, I find the video showed huge sprays of water that even reached and bounced off the roof of a shed; this volume of water appeared to be unnecessary to wash a small sundeck and appears to be a breach of the quiet enjoyment of the tenants who live directly below the spray.

Regarding the dispute on the interac transmission of the November rent, I find the rent was acknowledged as paid on November 8, 2018 so this is no longer an issue. I find insufficient evidence that this was harassment of the landlord as I find the testimony of the landlord credible that the transfer was not successful until November 8, 2018. The letter from their bank supported their credibility.

For the reasons above, I find there was a breach of the landlord's obligation to protect the tenants' right to peaceful enjoyment under section 28 of the Act. The weight of the evidence is that this occurred from March to October 2018. Policy Guideline 6 noted above states: *In determining the amount by which the value of the tenancy has been*

reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Various allegations concerning harassment were made by both parties about the other. Residential Policy Guideline #6 notes that harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". There are other definitions but all reflect the element of ongoing or repeated activity by the harasser. I find there is some evidence of harassment by the landlord as evidenced in the repeated Notices to End Tenancy which were found to be without sufficient cause. However, the weight of the evidence is that this was of limited duration.

I find insufficient evidence that the tenants were deprived of use of the premises but had limitations on their heat and problems with electricity. However, I find the actions of the landlord imposed stress on them when the repeated Notices were served without just cause and when they had no access to the breaker panel and had locks on their heat. Again, I find the evidence is that this was of limited duration over the period of 9 months (March to November). I also find the tenants contributed to some of the acrimony between the parties by being very noisy as attested by another tenant and calling the police when the landlords tried to knock on their door to advise them of the problem. While it is their right to lodge a complaint to Human Rights, I find this also was a contribution to the acrimony. Considering all the factors, I find a rent refund of $130 (approximately 10% of their rent) for each of the 9 months is appropriate compensation considering the sporadic nature of the stress and their contribution to the acrimony in the relationship.

Conclusion:

I find the tenant entitled to compensation of $1170 for disturbance of their peaceful enjoyment by the landlord's actions from March to November 2018. I find them also entitled to recover the filing fee. A monetary order for $1270 is issued to the tenants.

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 11, 2018

Residential Tenancy Branch