Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This dispute resolution proceeding was initiated by the tenant, who filed an application for dispute resolution on January 15, 2019, against the landlord. The tenant argues that the landlord is in breach of section 28 of the *Residential Tenancy Act* (the "Act") and seeks relief by way of an order, issued under section 62(3) of the Act, that the landlord comply with the Act.

A dispute resolution hearing was convened on February 26, 2019 and the landlord's agent and the tenant attended, and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses, if necessary. The parties did not raise any issues with respect to the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issue of this application is considered in my decision.

Issue to be Decided

The issue that I must decide is this: is the tenant is entitled to an order under section 62(3) of the Act that the landlord comply with the Act?

Background and Evidence

The tenant testified that he moved into the rental unit—an apartment in a multi-storey, multi-unit 55+ building—approximately six years ago. The specific relief sought by the tenant is that the landlord does something about a group of women in the lobby of the building who regularly bully, accost, and swear at the tenant.

The tenant described the group of women as “bullies” who use foul language, “accost me in the lobby,” and who are quite “nasty.” He explained that the women have been engaged in this type of behavior since before he moved in, that it became almost a daily occurrence at one point, but that about a year ago an employee of the landlord took steps to significantly reduce the behavior. Most recently, the women called the tenant “an asshole.” According to the tenant, this group hangs out in the lobby, where the behavior occurs. A few of the group are tenants in the building, while one of the group is a former tenant. She, however, frequently returns to the building to meet with the group and “ply her trade of being unpleasant.”

The tenant testified that he should be allowed to transit the lobby without getting accosted, and now must go through the back door in order to avoid the group. He seeks an order under the Act that the landlord take steps to prevent the group from meeting in the lobby, such as removing the comfortable furniture in the lobby, and stopping people from socializing and meeting in the lobby.

The landlord’s agent (hereafter the “landlord” for brevity) testified that the current landlord took over operations of the building in September 2018, and that some of the current activities, such as the women meeting in the lobby, were already ongoing. She explained that this group of people meets in the lobby to have coffee meetings because there is insufficient room to meet in the tenants’ rental units. There are, she said, about three to four different women who meet on weekends in the lobby. She noted that the landlord had previously asked the group to meet elsewhere in the building, and not in the lobby, and to consider meeting at a Tim Horton’s down the road; the group ultimately decided to keep meeting in the lobby.

In her final submissions, the landlord testified that regarding the whole issue of people meeting in the lobby, it is important for seniors to socialize. The lobby is an appropriate place for this. She explained that the office is adjacent to the lobby, and that they have monitored the noise levels and have not found there to be any issues.

Both in the tenant’s final submissions, and in the parties’ back-and-forth exchange near the end of the hearing, much was made of complaints that the landlord had submitted into evidence regarding complaints that others had made against the tenant. The landlord argued that the complaints showed a pattern of behavior that the tenant was engaged in. The tenant argued that the complaints no such pattern of behavior, and in fact were concocted in collusion with others to “make me look bad” at this hearing.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenant claims that the landlord is in breach of section 28 of the Act, which reads as follows:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
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> (b) freedom from unreasonable disturbance;
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> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant argues that by failing to take steps to stop the group of women meeting in the lobby—a group who purportedly accost and swear at the tenant—the landlord has failed to uphold the tenant's rights to quiet enjoyment, specifically under subsections 28(a), (b), and (d) of the Act.

As per *Residential Tenancy Policy Guideline 6* ("Entitlement to Quiet Enjoyment"), a landlord is obligated to ensure that a 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.

While the tenant did not provide any specific dates and times for when the group's disreputable behavior occurred, the landlord did not dispute that such behavior occurred. Instead, the landlord tendered evidence concerning the tenant's past conduct. Evidence of A is not proof that B did not occur. In other words, in the absence of contradictory evidence or an explicit denial or dispute by the landlord, I must accept the testimony of the tenant that there is a group of women who congregate in the lobby and, for whatever reason, unreasonably disturb and interfere with the tenant's passage through the lobby.

I find it difficult to accept the landlord's argument that there is "not enough room" to meet in one of the occupants' rental units. While neither party provided evidence or testimony concerning the size or layout of the building's rental units, it is difficult to imagine a rental unit that could not accommodate three or four people.

That having been said, I accept the landlord's argument that it is important for senior citizens to meet socially, and that a lobby is an acceptable place for this to occur. Certainly, the presence of a comfortable couch in the lobby aids in such socialization, and I am not inclined to order the removal of this couch. A lobby is, as the tenant explains, a place where people wait for taxis, or meet people, and a couch is an important piece of furniture when one must wait for a taxi or a friend. Further, it also does appear that the landlord took reasonable steps to correct the situation by asking the group to meet elsewhere. All of this said, the landlord did not dispute that this group of individuals acted in the manner as described by the tenant, and that the behavior of said group has not stopped.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for an order under section 62(3) of the Act that the landlord comply with the Act.

Conclusion

I order that the landlord comply with section 28 of the Act, and, that it take all reasonable steps to ensure that the tenant's right to quiet enjoyment is upheld.

If all reasonable steps taken do not address this matter, then the tenant is at liberty to apply for dispute resolution seeking compensation for loss of quiet enjoyment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 26, 2019

Residential Tenancy Branch