



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for loss under the *Act*, for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The corporate landlord was represented by their agents and legal counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies, and evidence have been considered in the making of this decision. As this matter was conducted over 61 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be decided

Is the tenant entitled to compensation and the filing fee?

Have all or some portions of the tenant's claim for compensation been dealt with at a prior hearing?

Background and Evidence

The background facts are generally undisputed. The tenancy started on October 01, 2015. The monthly rent is \$948.12 plus a parking fee of \$20.00 payable on the first of the month. The rental unit is an apartment located on the ground floor of an apartment complex that houses 108 units and faces a common shared courtyard.

These parties have been involved in prior disputes the most recent being a monetary claim made by the tenant against the landlord, that was heard in Small Claims Court on May 24, 2019. The parties reached a settlement agreement and the tenant was awarded \$3,000.00. The tenant testified that since that date all the problems which led to her application for dispute resolution against the landlord have been resolved.

The tenant stated that the landlord has interacted with her in a manner that has resulted in severe migraines. The tenant is claiming the cost of prescribed medication and has filed a copy of the list of medications purchased by her along with the cost she incurred. This list provides the names of the drugs purchased by the tenant in 2017.

During the hearing the landlord checked out one of the medications on the list and stated that it was for cholesterol and not migraines. The tenant replied that the harassment from the landlord also resulted in elevated levels of cholesterol. The tenant did not file any other documents like a doctor's report or a more recent list of purchased medication, that would support her allegation that the landlord's behaviour was the cause of her medical problems.

The tenant has also claimed the cost of legal services that she has incurred for the various disputes that she was involved in against the landlord.

The tenant stated that the landlord had her truck towed away for lack of insurance when it was insured, and proof of insurance was on the dashboard. The landlord stated that the truck had no licence plates and the paper on the dashboard was placed face down and could not be read. The landlord stated that the tenant did not provide proof of insurance upon request. The tenant argued that she had.

The landlord pointed out that this matter formed part of the tenant's claim that was heard on May 24, 2019 in Small claims court. The landlord filed a copy of the tenant's notice of claim, to support his testimony.

In this application made by the tenant on July 04, 2019 and heard on this date August 22, 2019, the tenant has claimed \$22,000.00 as compensation for harassment by the landlord and described the following incidents to support her claim.

1. In September 2017, the tenant had her grand daughter over and there was a verbal altercation between the tenant and another occupant of the building in front of the child which caused the child to cry.
2. On June 25, 2019, another occupant came close to the balcony of the rental unit despite the recommendation of the judge, on May 24, 2019 for the parties to remain at reasonable distance from each other
3. On June 17, 2017, the landlord filed a complaint to the SPCA, against the tenant, falsely accusing the tenant of poisoning dogs of other occupants of the building.
4. The tenant stated that another tenant DK harassed her lawyer to the extent that her lawyer was unable to present her case successfully. During the hearing, the male tenant stated that he had additional evidence to support his testimony and intended to pursue this matter separately.
5. The tenant stated that two occupants of the building harass her on a consistent basis and despite her complaints to the landlord, the landlord does not take action.
6. The tenant stated that one day in June 2018, she opened her door after her dog alerted her to the presence of someone outside the door and saw one of these two occupants (who allegedly harass her) racing down the hallway. An obscene note was posted on the tenant's door. The tenant notified the landlord on June 24, 2018 and the landlord sent a notice to the occupant reminding her of the judge's recommendation to remain at a reasonable distance from the tenant. The landlord also warned the occupant that she could be evicted if this behaviour continues.

The tenant is claiming the following;

1.	Compensation for harassment	\$22,000.00
2.	Legal fees	\$9,745.00
3.	Medical Expenses	\$587.00
4.	Recovery of truck	\$283.00
5.	Filing fee	\$100.00
	Total	\$32,715.00

Analysis

1. Compensation for harassment - \$22,000.00

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”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord’s actions that rendered the premises unfit for occupancy.

As mentioned above the tenant had made application against the landlord for compensation and this matter was settled on May 24, 2019, in the Small Claims court. During the hearing, I informed the parties that any matters that were dealt with in the settlement dated May 24, 2019 would not be re-visited or dealt with during this hearing. I also explained to the parties the principle of *res judicata*.

Black’s Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

The tenant mentioned the incident which involved an altercation in the presence of her grand daughter. Compensation for this incident was one of the claims that the tenant made in her prior application and is listed as #14 on her notice of claim. As stated earlier this matter was dealt with on May 24, 2019 and the parties resolved their dispute by agreeing to an award of \$3,000.00 from the landlord to the tenant. Accordingly, I dismiss this portion of the tenant’s claim.

The tenant stated that one of the two occupants who was directed to remain at reasonable distance from the tenant, came very close to the tenant’s balcony on June 25, 2019. However, the tenant agreed that since then there has been no problems with the other two occupants who were named on the tenant’s petition to Small Claim Court.

The tenant stated that the landlord falsely accused her of poisoning dogs of other occupants of the building. Again, this matter was dealt with on May 24, 2019 and is listed as #16 on the tenant's notice of claim. Therefore, this portion of the tenant's claim is dismissed.

The tenant described the incident when the occupant named in the previous dispute as a person who harasses the tenant, allegedly posted an obscene note on the tenant's door. The tenant wrote a complaint to the landlord on June 24, 2019 and the landlord followed up with a warning letter to this person.

The landlord and tenant had different versions of events that led to the disagreements between them. The tenant was not able to provide any independent evidence to support her claim of harassment. Her case is entirely dependent on her version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the relationship between the parties is very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for harassment and therefore the tenants' claim for compensation in the amount of \$22,000.00 for harassment is dismissed.

2. Legal fees - \$9,745.00

The legislation does not permit me to award any litigation related costs other than the filing fee.

3. Medical Expenses - \$587.00

Based on the testimony and documents filed into evidence, I find that the tenant has not provided sufficient evidence to demonstrate that the landlord's actions were the cause of her medical problems. Other than a list of prescribed drugs purchased in 2017 and their cost the tenant did not file a doctor's note or any other reports to link her health issues to the residential environment. The tenant's claim is accordingly dismissed

4. Recovery of truck - \$283.00

As stated above this matter was also dealt with on May 24, 2019 and is listed as item #24 on the tenant's notice of claim for that proceeding. Since the tenant has already been awarded compensation this portion of her claim is *res judicata* and accordingly dismissed.

5. Filing fee - \$100.00

The tenant is not successful in her application and therefore must bear the cost of filing her own application.

Overall the tenant has not proven any of her claims for compensation and therefore her application is dismissed.

Conclusion

I dismiss the tenant's application without leave to reapply

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 03, 2019

Residential Tenancy Branch