Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROOKSWOOD PROFESSIONAL MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to sections 65 and 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 24, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary for their loss of quiet enjoyment of the rental unit during this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective

submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This one-year fixed term tenancy was for a two bedroom rental unit in a seven unit level townhouse style building. The tenancy began on September 1, 2016 and was scheduled to end on August 31, 2017. Monthly rent was set at $1,685.00, payable in advance on the first of each month. Although the tenant paid a security deposit of one-half of the monthly rent, the landlord has returned that deposit to the tenant following the end of this tenancy.

On July 17, 2017, the tenant gave the landlord a written notice to end this tenancy by August 15, 2017. The parties agreed that the tenant paid one-half month's rent for August 2017. The landlord allowed the tenant to terminate their fixed term tenancy early without imposing any penalty on the tenant and without seeking recovery of the final half month's rent for August 2017.

The tenant's application for a monetary award of $7,582.50 was filed with the Residential Tenancy Branch (the RTB) on August 13, 2019, within the two year time limit for doing so. The tenant's application requested a monetary award equivalent to the full value of their monthly rent for the final four and a half months of their tenancy due to their loss of quiet enjoyment of the rental unit. The tenant maintained that their estimate of their loss of quiet enjoyment for a 4 1/2 month period was if anything a "lenient" estimate of the extent to which their tenancy was devalued by the landlord's failure to provide them with a safe and smoke free place to live.

The tenant supplied portions of email exchanges with the landlord or the landlord's representative that dated from November 2016 until near the end of this tenancy. The tenant maintained that this email record, and another provided by the landlord documented the tenant's attempt to obtain a resolution to the tenant's concerns about the ongoing pattern of second hand smoke from tobacco and marijuana products entering the tenant's rental unit, from a nearby rental unit. The tenant also claimed that the tenant in the nearby rental unit was aggressive and threatening, which led to considerable stress to the tenant and their children who resided there. The tenant said that they entered into this tenancy because they understood that it was a non-smoking building. The tenant alleged that the tenant in the nearby rental unit frequently contravened the rules requiring smoking to be more than three metres away from the building or any entrance to the building. Although the tenant gave undisputed sworn testimony that they alerted the landlord's building representative that the tenant in the nearby rental unit was smoking tobacco and marijuana within the building or close to the building a few days after this tenancy began, the tenant said that little was done by the

landlord to remedy the situation until after the tenant had provided the landlord with notice that they were ending their tenancy early.

Both parties provided a detailed list of incidents that the tenant reported to the landlord. The tenant advised that all of their initial complaints about this situation were made orally to the landlord's representative. By November 2016, the tenant had started sending the landlord's representative emails of their concerns about the smoke that was entering their rental unit from the nearby unit. After the tenant received little satisfaction regarding an email they sent the landlord's representative in December 2016, the tenant commenced periodic calls to the local police, which actually had a community policing office on the main floor of this building. The tenant testified that there were only occasional problems over the winter months because the nearby tenant was out of town for most of the winter. The tenant said that problems started to recur by June 4, when the tenant had to send the landlord's representative another complaint that their neighbour was contravening the non-smoking rules in place for this building and were causing noise at night such that it affected the sleeping of those living in the tenant's rental unit. By the end of June, the tenant once more asked the landlord about the possibility of ending their tenancy early.

The tenant testified that the problems with the nearby tenant led to another call to the local police on July 11, 2017. By mid-July 2017, the tenant said that the problems with the nearby tenant had escalated considerably. After watching and listening to the nearby tenant abusing people that were attending one of the nearby tenant's raucous parties, the tenant's daughters became very scared to be at home as they felt it was unsafe. The tenant said that the tenant and their daughters were very stressed by this situation to the point where they could not sleep properly and the tenant had to remain at home with their daughters and miss work. The tenant said that it was only after the tenant committed to move out of the rental unit early that the landlord began seeking information on how to effectively deal with the tenant in the nearby rental unit.

The landlord maintained that it had been difficult to identify which of the tenants in this building were responsible for the second hand smoke that was entering the tenant's rental unit. The landlord said that the smoke could have been emanating from a nearby park, from those smoking in the street below the tenant's rental unit, or from any of the other tenants. Although the landlord met with some of the other tenants, they all denied contravening the no smoking provisions that were part of their tenancy agreements. Without more concrete information and after consulting with Landlord BC, the landlord felt that they did not have sufficient information to take more formal steps with other tenants in the building to address the tenant's concerns.

The landlord gave undisputed sworn testimony and written evidence that as early as January 2017, the landlord offered the tenant the opportunity to end their tenancy early and without penalty should the tenant wish to end this tenancy prior to the scheduled August 31, 2017 end date for this tenancy. When the tenant's complaints increased in July 2017, the landlord reiterated the offer to allow the tenant to end the tenancy early without penalty, which the tenant accepted at that time.

The landlord confirmed that the tenant in the nearby rental unit was eventually evicted for cause, which occurred about three or four months after the tenant moved out of the rental unit in mid-August 2017. While the landlord thought that their representative issued warning letters to the nearby tenant, they were not certain of when or even if this occurred. The landlord did not know when a 1 Month Notice to End Tenancy for Cause was issued to the nearby tenant, the specific reasons cited for ending that tenancy, or when the nearby tenant actually vacated this building. The landlord said that the concerns raised by the tenant about the tenant in the nearby unit was part of the reason for ending the nearby tenant's tenancy for cause.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that there was a loss in the value of their tenancy arising out of the landlord's failure to adequately protect their right to quiet enjoyment of the premises the tenant had rented.

Section 28 of the *Act* reads in part as follows:

> ***Protection of tenant's right to quiet enjoyment***
>
> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*

(b) freedom from unreasonable disturbance;...

While the tenant has found their neighbour's actions upsetting, their unsatisfactory interactions with respect to these interactions are not necessarily subject to intervention by the landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. In this case, I find on a balance of probabilities that for the first portion of this tenancy, the informal measures the landlord and the landlord's representatives were taking were appropriate given that the tenant appears to have been the only one complaining about the behaviours of the nearby tenant.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

The tenant's application seeking a monetary award equivalent to their payment of 4 1/2 months rent would essentially allow the tenant to stay in the rental unit rent-free from the period from April 1, 2017 until August 15, 2017, when the tenant surrendered vacant possession of the rental unit to the landlord. During that period, the tenant had full possession of the rental unit.

In considering this matter, I take into account that by January 2017, the tenant had raised sufficient concerns to the landlord about this matter that the landlord took the unusual step of offering to allow the tenant to end their fixed term tenancy eight months before it was scheduled to expire without penalty to the tenant. This offer was declined by the tenant. By the tenant's own admission, there were few complaints about their neighbour during the winter months because the nearby tenant was out of town. On this basis, I find insufficient evidence to support any award for the loss in the value of this tenancy during the winter of 2017 or prior to June 2017.

While the tenant cited a few intermittent incidents involving the nearby tenant in the first part of 2017, the next series of interactions cited by the tenant commenced in early June 2017. By the end of June 2017, the tenant was again asking about the possibility of being released from their fixed term tenancy early. The tenant gave undisputed sworn testimony supported by written evidence that by mid-July 2017, the situation had

"escalated" to the point where the tenant and their children were stressed and feeling unsafe in their rental unit.

I find that the tenant's eligibility for a monetary award for their loss of quiet enjoyment and the value of their tenancy commenced in mid-July 2017. This was approximately a month after the landlord had been given yet another opportunity to address the concerns raised by the tenant in June of 2017. I select this time period, as by then I find that the landlord had been given what I consider to have been ample opportunity to commence some form of more formal action to address the tenant's concerns that had been raised off and on for many months. The landlord had not taken action by that date, and the landlord was not even certain when or if warning letters had been issued to the nearby tenant advising that continuing complaints of smoking in or near the building could lead to an end to their tenancy. The landlord also supplied few details regarding the actual circumstances surrounding the eventual eviction of the nearby tenant, the source of the tenant's unresolved complaints.

Although the tenant is eligible for a monetary award for the loss of quiet enjoyment, the tenant supplied no information or evidence from health care providers or anyone else to document the extent to which the loss of quiet enjoyment had affected the lives of the tenant and their children. The tenant did continue living in the rental unit until August 15, 2017, one month after giving their notice to end this tenancy early.

Under these circumstances, I find on a balance of probabilities that the tenant's claim for a retroactive reduction of 4 1/2 month's rent is excessive and unwarranted. Rather, I find that the tenant is entitled to a reduction of one half of the $1,685.00 in rent they paid for the period from July 16, 2017 until August 15, 2017. This results in a monetary award in the tenant's favour pursuant to section 65 of the *Act* in the order of $842.50 ($1,685.00 x 50 % = $842.50).

Since the tenant has been successful in their application, I also allow the tenant's application to recover their filing fee from the landlord.

Conclusion

I issue a monetary Order on the tenant's behalf in the amount of $942.50, which enables the tenant to recover $842.50 in rent they paid the landlord during their tenancy and to recover their $100.00 filing fee. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible.

Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 22, 2019

Residential Tenancy Branch