



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, OLC, PSF, MNDC, FF

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order restricting the Landlord’s entry - Section 70;
2. An Order for the Landlord to comply - Section 62;
3. An Order for the provision of services and facilities - Section 65;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Witnesses provided evidence under oath.

Issue(s) to be Decided

Is the Tenant entitled to an order restricting the Landlord’s entry?

Is the Tenant entitled to an order for compliance?

Is the Tenant entitled to the provision of services or facilities?

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on July 1, 2010. Rent of \$845.62 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$412.50 as a security deposit.

The Tenant states that it understands that it is restricted to a monetary limit of \$35,000.00 and clarifies that its claims are as follows: compensation of \$5,000.00 for breach of quiet enjoyment in relation to a storage locker issue, \$10,000.00 for punitive damages in relation to the storage locker issue and \$20,000.00 for breach of quiet enjoyment in relation to noise from an alarm and a dog.

The Tenant states that between the fall of 2017 to December 2017, for a period of three months and 10 days, the fire alarm in the building beeped continually, without cessation. The Tenant states that the Landlord was immediately informed when it started. The Tenant states that a written form was also filled out with its complaint and given to the Landlord's manager at the time. The Tenant states that no copy of that complaint was provided back to the Tenant. The Tenant states that another tenant also complained about the alarm and refers to a decision dated June 21, 2018 to support the Tenant's evidence of the length of time the alarm sounded. The Tenant states that the Landlord informed the Tenant that the alarm was old and could not be repaired and that a new alarm needed to be installed. The Tenant states that a few days later the Tenant spoke to the fire prevention service and was informed that they would be inspecting the alarm, that the manager of the building was known to them and that they had tried to work with this manager but encountered difficulties.

The Tenant states that the fire alarm is on the ground floor near the front door and that the Tenant also lives on the ground floor. The Tenant states that the alarm could not be heard in its unit. The Tenant states that the alarm was very disturbing to the Tenant whenever the Tenant was in the hall as it triggered memories of a previous fire experience and that the Tenant experienced depression as a result. The Tenant states

that it did not seek medical help. The Tenant states that as the Tenant has tinnitus the ringing also continued in its ears after leaving the hall and returning to its unit. The Tenant states that it applied a year ago in relation to the noise but that this claim was dismissed with leave to reapply at a previous hearing.

The Tenant states that from January to October 2019 the Tenant was also disturbed by another tenant's barking dog at 7:00 a.m. in the morning and again on each hour between 4:00 and 7:00 p.m. each week day. The Tenant states that the tenant with the dog was purposely making the dog bark at these times. The Tenant states that it complained in January 2019 and thereafter by making at least 50 calls to the Landlord. The Tenant states that the Landlord got that tenant to use a device to stop the barking but that this did not resolve the barking that continued until October 2019. The Tenant states that the other tenant was purposely making the dog bark to disturb the Tenant.

The Tenant claims \$20,000.00 for the breach of the Tenant's quiet enjoyment.

The Landlord confirms that a previous hearing was held with another tenant who gave evidence of the alarm beeping but that the Landlord denied the length of time that the tenant said it occurred. The Landlord provided the file number for this decision as noted on the cover page of this decision. The Tenant states that it did not make the claim for compensation earlier as the Tenant has been ill and due to other acts of the Landlord that are not the subject of this dispute.

The Landlord states that the manager is no longer working for the Landlord. The Landlord states that the alarm never went off and that the fire panel was only letting off a beeping sound that was being monitored by their fire company. The Landlord states that it has no copy of the Tenant's written report of the alarm and has no record of complaints. The Landlord states that there may have been oral complaints from other tenants. The Landlord state that its fire company replaced the battery for the fire panel on December 20, 2017 and that this resolved the issue. The Landlord states that while

the fire department tests the system once a year it is unknown when the last inspection was done. The Landlord states that when the alarm does go off the fire company monitoring the system calls the fire department. The Landlord also states that the report from the servicing of the panel indicate that the company attended the building to inspect the beeping on February 2018. The Landlord states that the Tenant has poor recollection and is not telling the truth about the alarm.

The first Witness for the Landlord ("Witness BR") states that it received a work order dated December 17, 2017 in relation to the beeping alarm and that it was remedied by December 20, 2017. Witness BR states that it has no other knowledge of when the beeping started. The Tenant states that Witness BR was in the building 2-3 times each week during the period of beeping and is not being truthful about the beeping. The Tenant states that Witness BR informed the Tenant that it would not give damaging evidence against the Landlord out of fear of losing his job. The Landlord states that Witness BR has been an employee for over 10 years and that no employee would face repercussions over evidence given at a hearing.

The second Witness for the Landlord ("Witness DF") states that she was the resident manager from September 16, 2014 until July 30, 2019. Witness DF states that no complaint about the beeping was ever made by the Tenant other than one complaint in March or April 2018. Witness DF states that as the previous manager she would be in the building 3 times each day for her 5-day work week, as well as on occasion on off work days. Witness DF states that she only heard occasional beeping during the beginning of November 2017. Witness DF states that it was caused by a drop of temperature affecting the alarm battery and that this drop in temperature only occurred once in November 2017. Witness DF states that the alarm was repaired sometime in January 2018.

Witness DF states that the Tenant sent a note in relation to the dog barking in about the second week of July 2019 and that a written complaint was received from the Tenant on

August 3, 2019. Witness DF states that the Tenant was informed immediately after the July 2019 complaint that the matter would be addressed. Witness DF states that the tenant with the dog was encouraged to use a bark box and that the following Monday the Tenant informed the Landlord that it was happy with the result. Witness DF states that by August 2019 the Witness was no longer the manager for the Landlord.

The Tenant states that at times the Tenant would make as many as 30 calls to Witness DF about the barking. The Tenant states that while Witness DF did respond to the complaints no device was ever used on the dog.

The Landlord states that the Tenant has not provided sufficient evidence in relation to the dog barking. The Landlord states that the Tenant only complained on August 3 and September 5, 2019 about the dog barking. The Landlord states that on September 24, 2019 all other tenants were surveyed on the issue and that of the six that replied, including the tenant directly adjacent to the Tenant's unit, none heard any barking. The Landlord states that the tenant with the dog moved out of the building on December 28, 2019.

The Tenant states that the Landlord also breached the Tenant's quiet enjoyment by sending the Tenant a letter a few months ago and informing the Tenant that tenants would only be allowed one locker and that all other lockers would be cleared out with the contents destroyed. The Tenant states that it has 21 locker spaces. The Tenant states that at the outset of the tenancy the Landlord's manager at the time informed the Tenant that it had lots of locker spaces available and that if the Tenant agreed to rent the unit the Landlord would provide the Tenant with 21 locker spaces with no extra rent payable. The Tenant states that it required this amount of storage space and given this agreement the Tenant accepted the tenancy. The Tenant states that the manager also helped the Tenant move.

The Tenant states that while the Landlord has not acted to remove the lockers the very threat of the removal has caused the Tenant to be very upset as it has valuables and very important documents stored in the lockers. The Tenant states that upon receiving the letter the Tenant asked the manager that is no longer working for the Landlord what the reasons were for the letter. The Tenant states that the threat of removal of the storage lockers were part of the manager's efforts to evict the Tenant. The Tenant states that the manager told the Tenant that it would be allowed 2 lockers and gave the Tenant until September 2, 2019 to remove its belongings from the other lockers. The Tenant states that at this time Witness DF knew that the Tenant had 21 lockers as the Tenant had informed Witness DF of this number of lockers. The Tenant states that this prompted the Tenant to make its application as it was concerned that the Landlord might arbitrarily dispose of the Tenant's belongings. The Tenant states that the manager made real threats and that the Tenant believed that the manager would not back down on the threats to remove the lockers. The Tenant states that as a result the Tenant was caused significant worry, lost sleep and spent 4 weeks organizing its belongings in the storage lockers in case the Landlord came to remove these belongings. The Tenant states that when the new manager started in the beginning of September 2019 this person informed the Tenant not to worry that the previous manager was crazy and that the letter would not be acted on.

The Tenant claims \$5,000.00 for breach of quiet enjoyment. The Tenant states that the acts of the Landlord were outrageous and deliberate resulting in damage to the Tenant and the Tenant claims \$10,000.00 in punitive damages.

The Landlord states that nothing in the tenancy agreement indicates that the Tenant was provided with the lockers and that there is no record of the Tenant using the lockers. The Landlord states that the purpose of the letter was to take inventory and update its records in relation to the lockers. The Landlord states that there was no intention to enter and remove items from the lockers. The Landlord states that not all the locker fees were accounted for in their records. The Landlord states that it

purchased the building in March 2012 and that there were no documents noting the number of locker rentals and has lost these documents. The Landlord states that the letter's purpose was to determine who was using what lockers without this being noted in the tenancy agreements. The Landlord states that only the Tenant reported its use of the lockers. The Landlord states that it only knew of a shortage of available lockers. The Landlord states that it did not speak to the Tenant about the lockers. The Landlord states that the manager never informed the Landlord that the Tenant was objecting strongly.

Witness DF states that the notice in relation to the storage lockers was send out on May 27, 2019. Witness DF states that no threats were made to clean out lockers, that no threats were intended and that the tenants were given three months to claim their lockers. Witness DF states that a voice message was left for the Tenant after the notice was sent out and that this message indicated that the Landlord was aware that the Tenant had two lockers and would be allowed to keep them. Witness DF states that they had no awareness that the Tenant had 20 lockers and that the Tenant made no verbal complaints.

The Tenant argues that since Witness DF indicated that the Tenant would only be allowed two lockers that the Landlord will enter and remove the Tenant's belongings from the lockers. The Tenant seeks an order restricting the Landlord from entry into the storage lockers. The Landlord states that there is a total of 49 storage lockers in the building of 48 units. The Landlord states that it never had any intention to enter and remove items from the Tenant's lockers and agrees that it will not enter any storage locker. The Landlord states that there is no argument from the Landlord that the Tenant has the storage lockers stated by the Tenant as provided.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (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.

Alarm and Dog

A review of the decision obtained by a different tenant in the building does set out another tenant's evidence of the alarm beeping for approximately 4 months leading to April 2, 2018. This decision also sets out the Landlord's dispute of that time frame. The Landlord's Witness evidence at this hearing indicates that the beeping was resolved in December 2017 or January 2018. The Landlord also gave evidence that the beeping occurred again in February 2018. The Landlord's Witness states that occasional beeping was heard in November 2017. While the Tenant may be confused as to the exact dates, given the Landlord's evidence I find that the Tenant has substantiated the alarm beeping for some period of time between the fall of 2017 and the early part of 2018. As the Tenant provided no medical evidence to support the connection between its depression and tinnitus effects from the beeping in the hallway, I find that the Tenant has not sufficiently substantiated these effects or harm from the beeping. For these reasons and as the Tenant has not provided any other evidence of disturbance from the beeping while inside its unit, I find therefore that the Tenant has not substantiated any significant interference and that the Landlord breached its right to quiet enjoyment from the beeping of the alarm.

Given the lack of supporting evidence that the Tenant complained of dog barking from January 2019 and considering the Landlord's evidence that there were no complaints

until July 2019 I find on a balance of probabilities that the Tenant has not substantiated that the Landlord knew of any disturbance by the dog until that point. Given the Tenant's evidence that the Landlord intervened after receiving a written complaint from the Tenant in July 2019, I find that the Tenant has not substantiated that the Landlord failed to act on the report of dog barking. Given the Landlord's evidence of complaints from the Tenant on August 3 and September 5, 2019 I find on a balance of probabilities that the dog did bark during the day and it would be reasonable to accept that this barking was disturbing to the Tenant. Given the Landlord's evidence that it only surveyed other tenants for noise on September 24, 2019 and without evidence that the Landlord did anything else about the complaints until that date I find that the Tenant has substantiated that the Landlord failed to act within a reasonable time after the Tenant's complaints in August 2019. As the Tenant's evidence is that the barking stopped in October 2019, I find that the Tenant has substantiated a nominal amount of **\$200.00** for this disturbance in August and September 2019.

Lockers

Based on the undisputed evidence that the notice in relation to storage lockers was a general notice to all tenants I accept the Landlord's additional persuasive evidence of not having knowledge of the number of lockers used by the Tenant at the time the notice, dated May 27, 2019, was issued. Further based on the undisputed evidence that the notice gave all tenants a significant amount of time to report the number of lockers held, I find that there is nothing threatening in the letter itself. Given the Tenant's written submissions that after sending the notice to the Tenant the Tenant was immediately informed that it did not have to worry as its lockers were grandfathered, I also find that the Tenant has not substantiated that the Landlord did anything to disturb the Tenant after provision of the notice. As a result, I find that the Tenant has not substantiated that the Landlord breached the Tenant's rights to quiet enjoyment, and I dismiss the claims made in relation to the lockers. As the Landlord has agreed that it did not intend and will not enter any of the Tenant's lockers, I find that the Tenant's claim for an order to restrict the Landlord's entry into the lockers has been met and I dismiss the claim for

restrictions on the Landlord's right to enter the lockers as provided under the Act or tenancy agreement. Should the Landlord fail to act as agreed, the Tenant has leave to reapply on this claim.

As the Tenant's claim for compensation has met with success to the amount of the filing fee, I find that the Tenant is also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$300.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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 Act.

Dated: January 15, 2020

Residential Tenancy Branch