



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAPPY PROSPECTS MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,000 pursuant to section 67;

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**ZZ**") and its building caretaker ("**FH**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and ZZ confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. ZZ testified, and the tenant confirmed, that the landlord served the tenant with its evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order for \$3,000; and
- 2) an order that the landlord comply with the Act?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the prior owner of the residential property entered into a written tenancy agreement starting March 1, 2019. The landlord took over the tenancy agreement from the previous owner on July 3, 2019. Monthly rent is \$900 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$450. The landlord still retains this deposit.

The parties agree that at the start of August 2019, an individual ("CD") moved into a rental unit located next to the rental unit of the tenant. The parties agree that CD was, as ZZ put it, "far away from a model tenant".

The tenant submitted a detailed log of disturbances she experienced coming from CD's unit between August and December 2019. She testified that this log did not contain all the disturbances, as she was so exhausted from CD's disruptions that she did not have the energy. The landlord accepts as true all the disturbances contained in the tenant's log. In brief, between August 5 and December 12, 2019 the tenant recorded disturbances on 39 separate days. She testified that these disturbances were quite severe, and often involved parties and loud music lasting all night and into the next morning (5:00 or 6:00 am). She testified that such disruptions caused her to be unable to sleep with any regularity during this time. The landlord did not dispute this.

The tenant testified that she first notified the landlord of the disturbances in late August 2019, when she spoke to the interim caretaker ("M"). She testified that the prior owner always had a caretaker living in the residential property. She testified that M did not live in the residential property, and that he was only there two times a week. ZZ testified that M was there every weekday.

In any event, the tenant testified that M told her to place a letter in landlord's mail box setting out her complaints. The tenant did this but did so anonymously. She testified she was afraid of potential repercussions from CD or his family.

ZZ testified that the landlord received the anonymous complaints in late August. He testified that it was the landlord's policy, when taking over a new building where it did not know the tenants or their relationships with one another, not to give too much

credence to anonymous complaints. He testified that these were often baseless complaints made with the intention furthering some ongoing dispute between two tenants.

As such, ZZ testified, the landlord did not conduct a throughout investigation of the complaint. He testified that M did speak with CD regarding his keeping an unauthorized dog in the rental unit, and generally about noise issues. ZZ did not give any other evidence about the scope of the investigation in August. I have no evidence to suggest that the landlord spoke with the tenant or any of the other occupants of the residential property about disturbances caused by CD.

CD's disturbances continued through September and October 2019. During this time, the tenant testified that she called the landlord's 24-hour contact line on several occasions to complain about the noise, but the issues persisted. She testified that sometimes no one would answer the 24-hour line, and other times she was directed to call the RCMP.

The parties agree that the landlord hired a permanent caretaker, FH, on October 15, 2019. The tenant testified that she told FH of the noise issues shortly after FH was hired and showed FH videos of CD's conduct.

ZZ testified that CD did not pay his rent on time for October 2019, and that, taking the opportunity to address the noise complaints, the landlord issued a ten day notice to end tenancy for non-payment of rent on October 11, 2019. However, the tenant provided the landlord with a cheque for the rental arrears within five days of being served, so the landlord could not end the tenancy on this basis.

In early November 2019, the tenant provided the landlord with further complaint letters, which she signed.

The parties agreed that the landlord took steps to address CD's behavior in early November 2019. On November 8, 2019, ZZ sent CD a warning letter regarding the disruptions, which stated "any further breach of the material term of your tenancy agreement will result in immediate termination of your tenancy".

The parties agree that CD's disruptive conduct persisted after this letter was sent.

ZZ testified that he was preparing an application to have CD evicted for cause. He testified he gathered evidence from occupants of the residential property, including the

tenant (who provided him with her log of disturbances). On November 25, 2019, the landlord served the tenant with a one month notice to end tenancy for cause.

On November 27, 2019, the landlord was notified by its bank that the cheque provided to them by CD for October rental arrears has bounced. The same day, ZZ testified, he prepared a second ten-day notice to end tenancy for non-payment of rent, and personally served it on the tenant. He testified that the tenant did not pay the arrears within five days and did not file to dispute the notice. Accordingly, the landlord filed for an order of possession by way of a direct request. An order of possession was granted against CD on January 2, 2020. The parties agree that CD no longer lives at the residential property.

The tenant stated that, as CD no longer resides at the residential property, she no longer needs an order for the landlord to comply with the Act.

The tenant argued that CD's conduct was so disruptive, extreme, and frequent that she is entitled to compensation in the amount of \$600 per month (that is a 2/3 rent reduction) for each month that he disturbed her (August to December).

ZZ argued that the landlord acted reasonably to address the tenant's complaints, and as such the landlord should not be liable for any amount.

Analysis

1. Order that the landlord comply with the Act

As CD has vacated the residential property, the tenant no longer requires an order that the landlord comply with the Act, as such, I dismiss this portion of her application.

2. Monetary claim

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 of the Act states:

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:

[..]

(b) freedom from unreasonable disturbance;

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 most circumstances this is the person making the application.

As such, the tenant must prove that the landlord breached section 28 of the Act, that she suffered quantifiable damage as a result, and that she acted reasonably to minimize the damage.

Policy Guideline 6, in part, states:

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.

[...]

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.

Based on the evidence of the parties, I find that CD's continued conduct constitutes unreasonable disturbances of the highest order. I accept the tenant's evidence that CD had parties that lasted until 5 or 6 am on multiple occasions. I accept that, as a result, the tenant was deprived of a significant amount of sleep, and that her quality of life was greatly diminished.

However, in order to establish liability against the landlord for CD's conduct, I must determine if the landlord failed to take reasonable steps to correct CD's behavior once it was made aware of it.

Based on the testimony of the tenant, I find that she first notified the landlord of CD's conduct at the end of August 2019, by providing the landlord with anonymous letters, and by advising M of CD's behavior. As such, I find that the landlord was not aware of CD's conduct prior to the end of August 2019.

I find that the conduct of the landlord following receipt of the anonymous letters was not reasonable. I find that, in light of the severity of the allegations against CD, and of the fact that the tenant had spoken with M directly about the issue, that the scope of the landlord's investigation (only speaking with CD) was not sufficient. I find that, at the very least, the investigation should have extended to contacting CD's neighbours to determine the validity of the complaints in the anonymous letters.

I find that, once the landlord received the tenant's signed complaint letters in early November 2019, their response to address the complaints was reasonable. It was reasonable to provide a warning letter to CD on November 8, 2019. A reasonable amount of time passed between serving this letter and serving the one-month notice to end tenancy on CD. I accept that ZZ need some time to gather evidence in support of the one-month notice and the inevitable application for an order of possession.

Additionally, I find it reasonable for the landlord to have served the second ten-day notice to end tenancy for non-payment of rent on CD, and to have sought CD's eviction by way of a direct request for an order of possession for non-payment of rent. In instances where a tenant does not pay the rental arrears, and does not dispute the notice, such applications are almost always successful. Such an application had a much higher chance of succeeding than one based on a notice to end tenancy for cause.

As such, I find that the period of time where the landlord was aware of CD's disturbances, and did not act reasonably to address them, was from the end of August to beginning of November 2019 (roughly two months).

I accept the tenant's calculation of damages compensable for her loss of quiet enjoyment. The conduct of CD was extreme, both in frequency and intensity. I find that the tenant was significantly deprived of her ability to use the rental unit. I find that she found little peace in her home during the time CD was her neighbour. I find that she had great difficulty sleeping due to CD's conduct. Accordingly, I find that a 2/3 monthly rent reduction is appropriate compensation.

I find that the tenant acted reasonably to minimize her damages. While the tenant did not sign her name to her initial complaints, I do not find that it was unreasonable for her to have done so. As stated above, I find that the landlord should have taken additional investigatory steps upon receiving the anonymous complaints. It is not reasonable for the tenant to know that her complaints would not be investigated if she did not sign them, especially in light of the fact she had spoken with M directly about the complaints.

As such, I find that the tenant is entitled to compensation in the amount of \$600 per month for each month the landlord knew or ought to have known about CD's conduct but failed to address it.

Pursuant to section 67, I order that the landlord pay the tenant \$1,200.

Conclusion

The tenant's application is partially successful. I order that the landlord pay the tenant \$1,200.

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: February 07, 2020

Residential Tenancy Branch