



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOSAIC DRF SEVEN LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OLC, LAT, LRE, MNDC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to sections 67, 62, 70 and 72 of the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of quiet enjoyment, for an order directing the landlord to comply with the *Act*, for an order authorizing the tenant to change locks and for an order restricting the landlord's right to enter the rental unit. The tenant also applied 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 tenant represented himself. The corporate landlord was represented by their agents AR and PJ. (referred to as landlord in this decision)

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

Both parties provided extensive documentary evidence. 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.

Issues to be decided

Is the tenant entitled to compensation and the other remedies he has applied for?

Background and Evidence

The background facts are generally undisputed. The tenancy started on April 01, 2018. The monthly rent is \$1,800.00 due on the first of each month and does not include parking (\$75.00) and storage (\$38.00)

The rental unit is an apartment located in a 4 storied building that houses a total of 66 rental units. There are 13 to 14 units on each floor. The tenant's rental unit is located on the first floor.

The parties agreed that the landlord posted and emailed the residents of the building adequate information regarding the fire inspections that were scheduled for August 21 and 22, 2020, during the period of 8:30 am to 12:00 noon. The landlord testified that he informed the tenant by emails on August 14 and 21, 2020 and placed notices by the elevator on all floors, in the mail room and in the parkade. The tenant confirmed that he was informed about the fire inspection. The landlord filed copies of the emails and of the posted notice into evidence, which provides details and explains the importance of the inspection.

The landlord described the process of the inspection. The inspectors visit each apartment to test the smoke detectors and the fire alarm. The testing of the fire alarm involves activating the alarm followed by shutting off the sound as soon as possible. The landlord stated that once activated the sound is extremely loud and can be heard inside every apartment on the entire floor that the apartment being tested is located on. The inspection in each apartment takes approximately five minutes.

The landlord testified that the inspections were delayed as a result of staff having to replace batteries in several smoke detectors in 15-foot ceilings, on the fourth floor. The inspections on the first floor started at 12:30pm. Unit 110 was inspected first as the occupant of that apartment requested an earlier time. This was followed by inspections of units 101 in sequential order until it was the turn of the tenant's rental unit 106.

The landlord testified that one of the fire inspectors went around knocking on the doors to inform the residents that the inspection was about to take place. The landlord's agent (PJ) testified that the tenant did not respond to the fire inspector's knock and therefore he knocked on the tenant's door several times before he used his key to enter the unit. At the time PJ used the master key to unlock the door he was accompanied by a technician. The landlord filed a statement from the technician into evidence.

The tenant stated that he was in bed naked and asleep and did not hear the knocking. He stated that he was rudely awakened by PJ unlocking the door of the rental unit. PJ testified that the tenant was right at the door when he opened it, yelling at him in an aggressive manner. This is corroborated by the witness statement of the technician who was also present with PJ when he unlocked the door.

The tenant filed a photograph which shows himself and PJ at the front door. PJ stated he was confronted by the tenant as soon as he opened the door, which implies that the tenant heard PJ using a master key to unlock the door or was by the door waiting for PJ to unlock the door.

The tenant testified that he went to bed at 12:05pm and did not hear the alarms going off as he was fast asleep. The landlord stated that the alarms were sounding from 8:30am that morning on other floors and from 12:30pm on the first floor.

The tenant filed evidence to confirm that PJ was by the open door at 12:54pm which is 54 minutes after the scheduled time. PJ agreed to the timeline and stated that he left seconds after he unlocked the door and was confronted by the tenant. PJ and the witness statement both state that they did not set foot in the apartment as they were met by the tenant right in the doorway and the tenant was yelling at them. PJ stated that he was overwhelmed by the behaviour of the tenant and had to leave the building.

The tenant agreed that after PJ and the technician moved away from his front door, he went from door to door knocking on his neighbours' doors. The tenant stated he wanted to ask them if they had the same experience as he had just had which is the landlord entering his rental unit without notice and by using a master key. The landlord stated that the tenant created a scene and even stood by the elevator informing people in the elevator of the alleged problem he had just faced, and this activity went on for about 30 minutes.

The tenant denied standing by the elevator to communicate with other residents and stated that he was so upset that he started to get pain in his chest. He then went up to unit 104 and handed the resident his cell phone after he had dialed 911. The ambulance arrived and took the tenant to the hospital.

The tenant stated that he had passed out and believes that he was on the floor when the paramedics arrived. He stated that he also believes that he had hit his head on the floor and suffered a concussion. The tenant did not file a medical report describing his condition as assessed by the paramedics. The tenant visited the doctor the next day and filed a doctor's report which states "possible concussion" under the comments. No other details are provided. The tenant is claiming \$25.00 for the cost of this report.

The tenant stated that the landlord caused his medical problem which resulted in his visit to the hospital by entering his apartment using a master key and without providing at least 24 hours written notice.

The tenant testified that the window of time on the notice the landlord had provided ended at 12 noon and the landlord attempted to enter the rental unit at 12:54pm. The tenant stated that by illegally attempting to access the rental unit, the landlord caused the tenant to experience a loss of quiet enjoyment of the rental unit. The tenant agreed that other than this time he was not aware of any other time that the landlord entered the rental unit without providing 24 hours notice.

The landlord filed copies of email correspondence between the tenant and himself regarding the incident. In his emails, the landlord explained the importance of the fire inspections to ensure the safety of all residents and notified the tenant that his behaviour on August 22, 2020, was inappropriate. In his replies, the tenant quoted legislation, stated that his privacy was violated and expressed his intention to seek compensation.

In this application for dispute resolution, the tenant is claiming compensation in the amount of \$1,913.00 for the loss of quiet enjoyment which includes \$1,800.00 for rent, \$75.00 for parking and \$38.00 for storage. However, the landlord expressed concern regarding a letter from the tenant informing the landlord that he intended to claim compensation in excess of one million dollars. The landlord filed a copy of the tenant's letter.

On September 03, 2020 the tenant wrote a letter to the landlord claiming compensation.

An excerpt from the letter (amended to remove identifying information) reads as follows:

We are in disagreement on the matter, and although it appears that the resolutions can be only reached using a third party, I however propose that we settle this matter in an amicable way out of court.

My offer is as follows;

- 1. All residents in the building will get free parking until the end of their tenancies and retroactively from January 1, 2020.*
- 2. Tenants on the first floor were effected by the consequences of my emotional distress caused by PJ's act. Their rent shall be to reduced significantly until the end of their tenancies.*
- 3. Landlord and, or PJ make a direct apology to me for the committed act.*
- 4. An apology to all tenants who were disturbed after the time stipulated in the fire inspection notice, to be made and posted.*

If you wish to respond, your response is required to the undersigned by no later than Thursday, September, 10th, 2020.

TENANT OFFER TO SETTLE

1. Value of free parking - 106 stalls X \$75 X 5 years (assumption) = \$477,000
2. Value of significantly reduced rent for first floor units - \$2,050 (average rent) X 16 homes X 50% reduction (assumption) X 5 years (assumption) X 5 years (assumption) = \$984,000

TOTAL COMPENSATION REQUESTED \$1,461,000.

The landlord did not accept the tenant's offer to settle the matter between themselves without going to court. The tenant provided a deadline of September 10, 2020 and when the deadline passed, he filed his application for dispute resolution on September 30, 2020. The tenant stated that he also intended to file an application in the Supreme Court for the larger amount of compensation. I informed the tenant of the principle of *res judicata*.

Analysis

Based on the documentary evidence and sworn testimony of both parties, I find that the fire inspections were scheduled for August 21 and 22, 2020. I further find that the landlord provided adequate notice to the tenant to inform him of the procedure that was scheduled to take place that day.

I accept the landlord's testimony that the inspections were running late and that Just prior to the inspection, a fire inspector knocked on residents' doors to notify them that the inspection would start shortly. The tenant did not respond to the knocking on his door and therefore PJ accompanied by technician, knocked a few times more.

Based on the landlord's description of the process, I find that for the duration of the inspections, the alarms were sounding intermittently inside the rental unit, approximately every 5 to 10 minutes starting at 12:30 on the first floor. The tenant stated he did not hear PJ knocking on the door but based on the tenant's photograph filed into evidence, he was right by the door when PJ unlocked it. If the tenant was fast asleep and did not hear the alarms going off or PJ knocking on the door, I find it is not possible for him to hear the turn of a key in the door of the apartment

I further find that if the tenant was asleep and not clothed, it would not be possible for him to wake up and reach the front door dressed and covered with a towel, at the time the door was unlocked.

I find that the tenant behaved inappropriately when he yelled at the landlord's staff and when he went around knocking on the neighbours' doors to ask if they had a similar experience. The tenant stated he started having chest pains. Despite having pain, the tenant did not return to his unit to lie down, but instead went to unit 104 and handed his cell phone to the resident of that unit, after he dialled 911.

Suspend or set conditions on the landlord's right to enter the rental unit
Order the landlord to comply with the Act, Regulation and/or tenancy agreement.

The tenant agreed that to the best of his knowledge, the landlord had never entered the unit without providing proper notice during the tenancy of 2 years and 8 months.

Based on my findings and analysis as noted above I find that the landlord has not breached the *Act* and therefore it is not necessary for me to order the landlord to comply with the *Act*, or place restrictions on the landlord's right to enter the rental unit.

Compensation for loss of quiet enjoyment - \$1,938.00:

1.	Rent	\$1,800.00
2.	Parking	\$75.00
3.	Storage	\$38.00
4.	Doctor's note	\$25.00
	Total	\$1,938.00

In order to prove an action for a breach of the covenant of quiet enjoyment and an entitlement to compensation, the tenant has to 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.

Section 32 of the *Residential Tenancy Act* addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit.

In this case, I find that the landlord carried out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. In order to carry out this duty, the landlord had to carry out annual inspections of the fire safety system and equipment.

I further find that the landlord fulfilled his obligations by scheduling a fire inspection of the rental unit and providing proper notice to the tenant. I accept that the inspections were running late which may have caused some inconvenience to the residents.

Residential Tenancy Policy Guideline# 06 addresses a tenant's right to quiet enjoyment and states that temporary discomfort or inconvenience does not constitute a basis for 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.

Based on the sworn testimony of both parties, I find that the tenant has proven that the landlord's inspection was later than planned but has not proven a substantial interference, with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy.

I further find on a balance of probabilities that it is more likely than not that the tenant's behaviour brought on his alleged chest pains which resulted in a hospital visit.

Based on the testimony of the parties and the documents filed into evidence, I find that the tenant is not entitled to compensation and his monetary claim is dismissed.

Changing the Locks

Residential Tenancy Policy Guideline #7 addresses locks and access and states that:

Where a tenant can prove that the landlord has entered contrary to the Residential Tenancy Act, the tenant may apply to have the locks to the rental unit changed.

The tenant agreed that the landlord has never entered the unit without providing at least 24 hours written notice. In this case, I find that the landlord provided adequate notice to carry out the maintenance of the fire safety equipment. I further find that due to unexpected circumstances the process was delayed, and the landlord attempted to carry out the inspection in the rental unit 54 minutes later than the scheduled time.

Based on the tenant's testimony, that to the best of his knowledge, the landlord has never entered or attempted to enter the unit without providing proper notice, I find that this is a one time incident where the landlord gave proper notice but attempted to enter after the scheduled window of time had expired. Accordingly, I find that tenant's request for permission to change locks based on this one-time occurrence is not justified and therefore dismissed.

Filing fee - \$100.00:

Since the tenant has not proven his claim, he must bear the cost of filing his application.

Conclusion

The tenant's application is dismissed in its entirety.

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: December 10, 2020

Residential Tenancy Branch