Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF, AAT, OLC, FFT

Introduction

This hearing was originally scheduled to convene on December 23, 2021 by way of conference call concerning an amended application made by the tenant seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord allow access to the rental unit or site for the tenant and for the tenant's guests;
- an order that the landlord comply with the *Act,* regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude and was adjourned several times either due to lack of time to complete or at the request of the parties. My Interim Decisions were provided to the parties at the end of each hearing date, with the exception of the final day when I directed the parties to provide written closing submissions by no later than 5:00 p.m. on October 10, 2022. That day was a statutory holiday, however the system portal was available for such uploads, in the same manner as evidence. The tenant's written submissions were received on October 10, 2022, however the landlord's written submissions were provided on October 11, 2022 with corrections on pages 1 and 7 uploaded later. The landlord has also provided an email from the tenant's Legal Counsel agreeing to extend the submission deadline to October 11, 2022 considering the holiday. Since the parties have mutually agreed, I accept the late written submissions of the landlord, with corrections made on October 18, 2022.

The tenant attended the hearing with an Advocate on all scheduled dates, and gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. Legal Counsel for the tenant (EK) joined the hearing on June 22, 2022.

The landlord was represented by Legal Counsel on the first scheduled date (VR) and an agent for the landlord (DD) also attended. Legal Counsel for the landlord changed prior to the second day of the hearing (GM), and the agent for the landlord company changed several times.

The parties, or their Legal Counsel were given the opportunity to question the parties and the witness.

The parties had attended this hearing before another Arbitrator on September 7, 2021 who ordered that no further evidence would be permitted, however the landlord's then Legal Counsel provided evidentiary material. None of that evidence has been reviewed and is not considered in this Decision.

However, the tenant amended the application on June 5, 2022 and provided further evidence. The landlord also provided additional evidence. On June 22, 2022 I ordered that only the evidence of the landlord as it relates to the amendment will be considered. I also ordered that some of the evidence provided by the tenant will not be considered, but only evidence relating to the amendment.

The parties attended another hearing before another Arbitrator, and during the adjournments of this hearing, the landlord was successful in obtaining an Order of Possession on March 30, 2022. I was advised that a Judicial Review Procedure had been filed but the tenant would not be pursuing that application. Since the tenancy has ended, I dismiss the tenant's applications for:

- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord allow access to the rental unit or site for the tenant and for the tenant's guests; and
- an order that the landlord comply with the *Act,* regulation or tenancy agreement.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement, and more specifically for loss of quiet enjoyment and aggravated damages?

Background and Evidence

The tenant testified that this fixed term tenancy started on July 2009 and reverted to a month-to-month tenancy after the first year. Rent in the amount of $1,435.00 is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $545.00 and no pet damage deposit was collected. The rental unit is an apartment in a complex.

The tenant further testified that the tenancy began with the tenant's then girlfriend, who was the only person who signed the tenancy agreement. The tenant had an appointment to sign over the lease to the tenant's name and remove the name of the tenant's then girlfriend, however the landlord wanted the tenant to sign a new tenancy agreement stating that the tenancy started in October, 2019 but the tenant refused to sign it. It would have effectively made everything prior to that date meaningless. The tenant further testified that a hearing was held before the Residential Tenancy Branch in October, 2019, and the Arbitrator made a finding that the tenant was a *de facto* tenant.

The tenant's previous girlfriend had moved to a different rental unit within the same rental complex and because her name was on the tenancy agreement the landlord served her with a notice to end the tenancy for cause to evict the tenant because the landlord didn't amend the tenancy agreement, saying that they weren't aware that they had to.

On February 18, 2021 the landlord disconnected the tenant's entry phone, and to be allowed in, the intercom system would go to a Shaw operator who didn't have any clue why the person would be calling. After the 5th or 6th operator, the operator might get ahold of the tenant, which caused the tenant's guests confusion and frustration. The operator would make a call to the tenant's phone number, then the tenant would answer and be able to buzz the guest in. If a guest phoned the tenant, the tenant would have to go down to the main level to let them in. The tenant could not buzz the guests in unless the guest went through the operator. On March 5, 2021 the tenant asked that the landlord completely disconnect it due to people trying to buzz in. However, more

incidents were caused by that, and resulted in letters and grief from the landlord. The landlord had indicated originally that a system upgrade was completed and that multiple suites were affected due to a glitch, but the tenant didn't believe that. The same day that the entry phone had been disconnected, the landlord issued a Notice to End the Tenancy of the tenant's rental unit. A copy of a detailed spreadsheet of events has also been provided for this hearing.

The landlord's agent at that time indicated that he had contacted the Residential Tenancy Branch and police, who told him that he should cut off the entry phone. However, on March 1, 2021 the tenant also called the Residential Tenancy Branch who advised that it could not be cut off, so the landlord decided to reinstate it. Then on March 4, 2021 the landlord's agents contacted the tenant's ex-girlfriend explaining that the tenant's phone had to be redirected to her phone number or cut off completely. The tenant had restricted fob access, not being able to use side doors, only the front, back, the loading bay and garage. The landlord said access was disconnected to egress only doors effective June, 2021 for all tenants, but other people still had access until January the following year.

The tenant's ex-girlfriend received a notice to end the tenancy for the tenant's apartment on February 18, 2021. The tenant had given a guest access and when the guest left the landlord claimed that the guest propped the door open and someone stole parcels. Four hours later someone came in and stole parcels from the lobby, but the tenant had no knowledge of that. Sometimes the door doesn't close all the way and lock. If the landlord had mentioned it, the tenant would have told the friend not to return.

Immediately following the hearing in October, 2019 the landlord completed a routine inspection, however up to that point, there were no inspections. The landlord gave notice, a copy of which has been provided for this hearing, however the tenant told the manager at that time that they could not enter and would have to re-book. The landlord re-booked and the tenant felt harassed, constantly trying to evict the tenant and picking on him. There were 2 inspections prior to the October, 2019 hearing and 6 after the hearing. During the hearing the landlord said that they were told they needed to take photographs of what they were claiming, and lost. Then they took photographs to try to evict the tenant again. Another inspection was done for fumes that made a suite uninhabitable, and the landlord thought fumes were coming from the rental unit. As a result of that inspection police and a SWAT team and HAZMAT team arrived on December 5, 2020 to inspect the rental unit as well as the rental unit of the tenant's ex-girlfriend, who resided in another unit within the rental building. The tenant was not in the rental unit at the time, but stepped outside and was told that they had already

inspected the tenant's suite without his knowledge, had just come from the tenant's rental unit, and inspected both suites. The tenant was unable to get any information about the incidents, and to the best of the tenant's knowledge, nothing was found and both suites were fine.

The tenant's suite could not have had anything to do with that; it's on a different floor. The tenant wasn't in his suite and didn't know that the landlords entered until after. The tenants tried to get information from the fire department, but were not successful. The tenant's ex-girlfriend spoke with an agent of the landlord, which was recorded, and the landlord's agent said all was fine, but later they tried to evict the tenant's ex-girlfriend due to fumes. If that was true, everyone would have been informed, not just 2 people.

There have been multiple inspections by the landlord for the tenant's rental unit: 2 in August, 2019, another in October, 2019, March 11, 2021, March 17, 2021, a questionnaire to complete on March 19, 2021, a fire inspection on March 23, 2021 and the fire department attended for an inspection on March 30, 2021. Prior to that there were only fire safety inspections done annually, which increased when the conflict started in August, 2019.

The landlord has also sent police to the rental unit saying that the tenant was posing as a landlord. However a person who lived in the unit below the tenant's apartment sent an email to the landlord saying that someone had represented himself as a landlord and wanted people to fill out a questionnaire for an eviction notice. The tenant did not pose as a landlord. That was 2 days before another hearing wherein the landlord gave a notice to end this tenancy to the tenant's ex-girlfriend. The tenant had taken a Petition in 2019 to other tenants asking if they had a problem with the tenant and to speak about the tenant's character. The landlord talked to everyone who had signed it, and said that the letter was not what they saw and that the tenant had added things after they signed it, or that the tenant had forged it. The boyfriend of one of the tenants signed it on his behalf and of his girlfriend's, and the girlfriend signed an Affidavit stating that the tenant forged her signature, but she wasn't even there. The police said that the tenant should move out, that the tenant was an unauthorized sublet, which was also not true. The tenant told them that the parties were in Arbitration for loss of quiet enjoyment, and the police changed their tone abit.

On May 5, the landlord sent notices to others saying that the tenant was a criminal and responsible for numerous thefts in the building.

An Arbitration Hearing was scheduled for May 18 in 2020 or 2021 after the landlord had served the tenant's ex-girlfriend with a notice to end the tenancy for the tenant's rental

unit. The tenant received the landlord's evidence, however stuck into the evidence package was a Notice of Expedited Hearing scheduled for May 10, 2022. The tenant attended both hearings.

The landlord has accused the tenant of saying sexually provocative things to other tenants and sending emails, and of letting people into the building. Police attended the rental unit on August 10 as requested by the landlords, and the tenant saw letters of complaint that the tenant had been creeping out women and posing as a building manager, neither of which are true. The tenant is cordial and has never said anything sexual towards any women.

The landlord has defamed the tenant's character encompassing the harassment, making the tenant look bad. The tenant has been singled out, had police called unnecessarily, intimidated the tenant, and it's been very rough for the tenant living at the rental complex with constant inspections, notices to end the tenancy, emails and notices on the tenant's door. There have also been several hearings. The tenant had to attend all of the hearings for disputes by his ex-girlfriend who had been served with multiple notices to end tenancy. There were probably 20 hearings and defamation is encompassed in the tenant's application.

The tenant's witness (LR) is the ex-girlfriend of the tenant. They had lived in a common law relationship for 13 years, then the witness moved out in 2014, to another rental unit within the complex.

The witness received a One Month Notice to End Tenancy for Cause which named the rental unit that the witness had already moved out of, but named the witness as the tenant. A copy has been provided for this hearing, and it is dated September 4, 2019 and contains an effective date of vacancy of October 31, 2019. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
    - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent;
- *Residential Tenancy Act only:* security or pet damage deposit was not paid within 30 days as required by the tenant agreement.

The Details of Cause(s) section states: "Unauthorized sublet. Trespass. Significant hoarding conditions to the degree the Landlord cannot ascertain condition of plumbing and fixtures because they are inaccessible. Smoking. A history of aggressive and threatening behaviour toward tenants and the building managers. Allowing access to unauthorized individuals to common and public areas. Failure to pay pet deposit."

The Notice was disputed and a hearing was held on October 22, 2019. A copy of the resulting Decision dated October 25, 2019 has been provided for this hearing. It cancels the Notice and states, in part, that the landlord had "not met the burden of proof on a balance of probabilities that the condition of the unit is "hoarding" as claimed or that the condition of the unit amounts to putting the property at significant risk." It also states that the landlord had failed to establish extraordinary damage, and that the legal principle of estoppel applies. It concludes that the landlord failed to meet the burden of proof with respect to any aspect of the landlord's claim.

Then a second One Month Notice to End Tenancy for Cause was given in February, 2021 which was addressed to the witness again at the same rental unit that the witness had moved out of. A copy has been provided for this hearing, which is dated February 18, 2021 and contains an effective date of vacancy of March 31, 2021 signed by the landlord's then agent (PJ). The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
    - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - damage the landlord's property;
    - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
    - jeopardize a lawful right or interest of another occupant or the landlord.

The Details of Cause(s) section indicates that the tenant and the witness are responsible for their guests' actions, and a guest of the tenant (CA) wedged open a secure entry door late at night resulting in an illegal trespasser entering the building.

The witness also testified that the landlord's agent (PJ) was in the hearing in 2019 and should have known that the tenant (CA) was a *de facto* tenant. When the witness was served, she asked the landlord's agent (PJ) and another property manager why it was not issued to the tenant (CA) at the rental unit named in the Notice.

The Notice was disputed and a hearing was held on May 18, 2021. A copy of the resulting Decision dated May 20, 2021 has been provided for this hearing. It states that although not acknowledged by the landlord, the Residential Tenancy Branch had already made a final and binding decision and that the landlord is estopped from claiming a sublet. The Notice was cancelled.

A copy of the resulting Decision from the expedited hearing has also been provided for this hearing. The hearing was held on May 10, 2021 and the Decision is dated May 11, 2021. It states that the landlord had provided insufficient evidence to support that the tenant was responsible for significant issues faced by the landlord and residents of the building.

The witness testified that another agent of the landlord (MJ) was banging on the witness' door like a maniac to serve the witness with an evidence package for the upcoming hearing scheduled for May 18, 2021, but had hidden an Expedited Hearing Notice in the evidence package. The witness dug through over 200 pages and hidden inside a little envelope was a separate notice of hearing. After the May 18, 2021 hearing, the Arbitrator ruled that the landlord had served the wrong person. Between February 18 and the May 18 hearing, the landlord continued to inundate the witness and the tenant with a lot of incidents trying to bog them down. The day after the May 18, 2021 hearing, the landlord put a notice to end the tenancy on the tenant's door, addressed to the tenant.

The witness also testified that normally a fire inspection was completed each year, however the landlords conducted the very first in-suite inspection since 2004 on August 22, 2019 with a notice stating that it was a "routine inspection" of the tenant's suite. Then the landlords tried to get the tenant out for hoarding, just before the tenant was served with the One Month Notice to End Tenancy for Cause dated September 4, 2019. The 3rd inspection was done on October 27, 2019 for another "routine inspection," just after the hearing but before receiving the Decision. The 4th inspection was on March 11, 2021, but addressed the Notice to Inspect to the witness, wanting to go into the tenant's (CA) unit to take photographs. The 5th inspection was on March 17, 2021, now saying there were numerous violations, complaints about the tenant's bike hanging on sprinkler lines, lights, cords, an island for pots and pans to hang. People still hang things there today. The landlords said that they would hire people to take things off the

pipes and give the bill to the witness and the tenant. On March 18th another inspection was done saying they were going in about a fire code but did not notify the tenant, only the witness.

The 7th inspection was on March 23, 2021 where numerous violations were apparently observed and a fire inspection was scheduled. However, the witness had gone to the fire department to ask them to do an inspection of both rental units, but they declined due to COVID-19. When the fire inspection took place, the witness thought they had changed their mind, but learned that the landlords requested it. The 8th inspection was a fire safety inspection, and the witness and tenant felt targeted due to the short period of time. The tenant (CA) complied with their recommendations. However, letters from the landlords were addressed to the witness for a rental unit that the witness did not live in. The witness got reports about inspections from the tenant (CA). All of the notices to inspect were given to the witness for the tenant (CA) and all corresponded with the dates that notices to end the tenancy were issued.

Everything from February 18 to May 18 is harassing and over the top. It was ironic that all of a sudden the tenant's entry phone stopped working when the witness received a Notice to end the tenancy. During one of the hearings the landlords tried to make it out as an upgrade. The landlords were building up all this evidence against the tenant from February 18 until they actually served him, and now have all these complaints in February, after the entry phone was disconnected. They gave the witness 2 options: move the tenant's entry phone to the witness' phone or remove the tenant's entry phone. From February 18, 2021 until March 25, 2022 the tenant had no entry phone, which is over a year. It was never on the witness' phone. The witness and the tenant asked the landlords to reconnect it numerous times, and in writing.

The witness and the tenant use the east emergency exit door often and in March, 2021 noticed that they couldn't get back in those doors. The tenant's fob didn't open the side doors, and the witness' was cut off later. In June, 2021 the landlords put out a notice saying that they were going to cut off all access. The witness took numerous video footage of people going through those doors up until January, 2022.

The witness attended a meeting with an agent of the landlord (MJ). The common key was going to be key specific for each floor. During the meeting, the tenant got into a heated discussion with the landlord's agent, wherein the witness asked why the witness and tenant didn't have the same access after giving notice about it. Then the landlord's agent backed up and said it takes time, but it had been 6 months.

There was a noise complaint, but the landlords gave the complaint to the witness, not to the tenant (CA).

Police have also been called by the landlords on several occasions. On December 5, 2020 a large presence of officers from SWAT, Hazmat and the fire department came for some toxic smell, but with such a large presence, building managers would let 200 renters know, or even half of the building. After they left the witness' apartment, the witness asked the assistant manager what was going on, who didn't know. The landlord's agent (PJ) said it was for another unit, but they eventually made it seem like it was the witness' diffuser, which is 100% eucalyptus. They also went into the tenant's unit.

Another occasion was 2 days before a hearing and the tenant was going to be a witness. The police were saying that the tenant was an unauthorized sublet. They were also there on March 4, 2021 and May 6, 2021 when the tenant was parked in front of a friend's place, the day after the landlord's agent (MJ) wrote a letter to a bunch of people on a petition from 2019 and emails to all of them saying that the tenant is involved in criminal activity. The next day the tenant was arrested for being a "known drug user." All got dropped.

The witness made a claim for loss of quiet enjoyment from February to May, 2021. What the witness has gone through has been pure hell. The landlord's agent (PJ) said that all 200 units would be inspected last February, and that hasn't happened. The witness and the tenant felt singled out.

The landlord's agent (MJ) testified that she had reviewed the audio and video evidence.

The landlords offered the tenant a tenancy agreement but he refused. The lease on file for that rental unit was a commercial lease in 2009, which is how it was done then, but the tenant wanted the landlords to amend it. The landlords sent notices to the tenant's witness in 2014, and received information back that the parties had parted ways. The tenant's witness moved out of the tenant's unit and directly to another, so at some point moved out of the original unit and the tenant (CA) moved into it. To suggest that the tenant was out of town when the original commercial lease was signed is not correct, the tenant was charged with an offence.

Police were called by management on 3 occasions, and there are 3 police file numbers that were initiated by the tenant. On one occasion the landlords called police due to complaints, and more than 2 incidents caused other occupants to feel unsafe, and one

tenant moved out because of the tenant. He had represented himself as management, and knocked on doors to get questionnaires filled out. Tenants were concerned about activities, especially women and the landlords needed to address it so called the police a second time.

The doors had been upgraded to make them fire exits only, and notices were placed stating that they were alarmed. The notices were accompanied with other notices which applied to all tenants. The landlords had complaints about people wedging doors open and missing parcels so the landlords wanted to control the flow of people; it should be a fire exit only anyway. It took some time to take effect for all tenants, because it wasn't as simple as the landlords had thought. In speaking to the security team, the landlords were advised that they should consider doing a complete building audit and that would take a long time. That has never been done in 20 years, so the landlords were planning to execute that.

The entry phone access was affected on 3 occasions: February 18, February 28 and March 1, 2021. It affected some tenants randomly on February 18. After contacting the Residential Tenancy Branch on February 28, the landlord was advised to get a mutual agreement from the tenant, so the tenant's phone entry was reinstated on March 1, 2021. Between February 18 and 28 the tenant was able to let guests in through an operator. The landlords didn't get advice from the Residential Tenancy Branch but got conflicting information, so the landlord's agent called back and spoke to a different officer who suggested getting a mutual agreement. The landlords tried to get a mutual agreement, and the entry phone would be suspended until the matter was resolved. An agreement was made through the tenant's witness that it would be disconnected until the hearing involving a notice to end the tenancy was concluded.

The landlords received an email dated September 16 from the tenant's witness enquiring and requesting that fobs be set to unrestricted access and that the doors were used often, but that was 3 months after the notice was posted. The tenant and the tenant's witness also requested access to the tenant's floor, and the landlords agreed because the tenants shared a dog. Part of the security upgrade, including fobs gave access to people who live on those floors to have access to their own floors with the same common key; each was floor specific. In order to complete the upgrades, the landlords sent emails to with a schedule to over 250 people asking that they attend the landlord's office with keys and fobs. The landlords ensured they were in the system, and it was an information gathering process. December 15 was the cut-off date, and it took some time doing a few per day. When the tenant's appointment was held, the tenant's witness attended and recorded the meeting, which did not go well or according

to plan. It was meant for the tenant's keys and fob and there was no reason for her to be there, and the witness used the opportunity to advance her own agenda related to her own filings with the Residential Tenancy Branch, and shifted direction from what the landlords were trying to accomplish. The tenant's witness got in the way, and her body language and conversation was disrespectful and was asked to leave several times.

The landlord's agent disagrees that the landlords have harassed, targeted or intimidated the tenant. The landlord's agent believed the tenant's guests posed a risk to others or the property due to thefts from other occupants which were discussed in the Residential Tenancy Branch process and resulted in eviction; guests harassing other occupants and fire code violations; having no insurance in place; ignoring COVID protocols, misrepresentation of management in order to trick people; bullying tenants, sexually harassing female tenants.

The notices to end the tenancy issued in 2021 were delivered to the tenant's witness even though the previous hearing declared the tenant a *de facto* tenant because the landlords wanted to ensure they followed the *Act,* and had a senior property manager give advice. A transfer of the landlord's management was when the 2019 notice to end the tenancy was issued. The previous manager filed the eviction with the tenant, and an agent of the landlord (PJ) erroneously posted it to the door of the tenant's ex-girlfriend; it was an honest mistake. The Decision was based on information gathering, and the decision was made to post it to her door, not the tenant's. The tenant's witness had to deal with it and the landlord admits that she was inconvenienced. The witness missed work and got compensation for that, but it was an honest mistake.

Analysis

This has been a difficult hearing, with changes in Legal Counsel, Agents for the landlord, as well as numerous movies, audio recordings and hundreds of pages of evidence.

The tenant also testified that defamation is encompassed in the tenant's application, however the *Residential Tenancy Act* does not permit defamation claims.

The tenant's application seeks a devaluation of the tenancy on a per diem basis and aggravated damages for loss of quiet enjoyment of the rental unit, and has provided several Monetary Order Worksheets breaking down the claims.

I have also considered the written submissions of the parties. The tenant's written submission indicates that after the second eviction notice, the tenant received 4 routine

inspections, 2 fire inspection notices, and an inspection questionnaire over a 3 week period, without a full 24 hours notice, or failing to show up to inspect, or late. There is evidence to support that submission. The tenant's written submission states that the tenant's claim is $16,334.65 in per diems of 25% or 75% of rent paid, broken down into periods ranging from August 15, 2019 to April 30, 2022 as well as aggravated damages in the amount of $2,700.00.

The landlord's written submissions requests that I review and consider the May 30, 2022 Decision respecting the May 18, 2021 eviction notice, which resulted in an Order of Possession in favour of the landlord.

The landlord's written submissions also indicate that eviction notices may be served by a landlord and that breach of a tenant's right to quiet enjoyment will not automatically occur as a result. I agree, however in this case, the tenant was required to attend all of the hearings because the notices to end the tenancy were meant to end the tenant's tenancy, not that of the witness. The landlord's written submission also suggests that I should not consider the Decision of the first Arbitration regarding a notice to end the witness' tenancy because the witness' testimony is not credible or reliable generally. However, I find that it is just as important for me to review that Decision as it is for me to review the last Decision as suggested in the written submission of the landlord.

A landlord is a landlord, regardless of how many agents of the landlord changed or took part in any of the events described by the parties and the witness. I find it difficult to accept that the landlord, who made numerous calls to the Residential Tenancy Branch and sought the advice of a senior property manager could not understand what was meant by a *de facto* tenant. It means that the tenant is a tenant whether or not a tenancy agreement in writing exists. I also find that the landlord was well aware that the tenant named in the commercial lease, the tenant's witness, moved out of the rental unit in 2014 and the tenant remained there, regardless of whether or not the tenant was actually in town when the commercial lease was signed. The landlord's agent testified that honest errors were made in the paperwork.

A landlord must provide a tenant with quiet enjoyment of a rental unit, free from unreasonable disturbance. It is very clear to me that the majority of the disturbances described by the tenant and the tenant's witness were disturbances of the tenant's witness, which has already been dealt with at Arbitration.

In order for the tenant to be successful in this application, the tenant must establish that the disturbances were unreasonable and that the landlord has failed to comply with the

Act or the tenancy agreement. The tenant must also establish what efforts the tenant made to mitigate any damage or loss suffered.

It was in 2019 that the tenant claims he was subjected to 2 routine inspections out of retaliation, and that the landlord attempted to have the tenant sign a Mutual Agreement to End Tenancy or face eviction, but notices to end the tenancy were addressed to and delivered to the tenant's witness. The tenant also testified that the day after the October 22, 2019 hearing, a third routine inspection notice was given to the tenant.

Considering the undisputed testimony of the tenant and the tenant's witness, I find that at least some of the notices to inspect, HAZMAT and police presence and fire inspectors, and taking photographs in the tenant's rental unit were an attempt by the landlord to obtain evidence to support evicting the tenant when previous attempts were unsuccessful. I see no relation to the HAZMAT presence to the rental unit of the tenant considering that the result was a diffuser from the witness' rental unit on the 1st floor and not from the tenant's rental unit on the 4th floor.

The tenant's claim of loss of quiet enjoyment includes the entry phone being disconnected, numerous letters and complaints, inundating the tenant and the witness, as well as ambushing the tenant with the Notice of an Expedited Hearing, also dismissed at Arbitration.

The tenant's entry phone was disconnected and FOB access was restricted on February 18, 2021, which the tenant believes resulted in complaints received by the landlord meant to support the landlord's reasons for ending the tenancy. The landlord's agent testified that a software glitch caused the outage, but has provided evidence stating that it was removed based on advice provided by police and the Residential Tenancy Branch, then was advised to reinstate it. The entry phone was disconnected the same day that the landlord issued the second One Month Notice to End Tenancy for Cause. I don't believe that was a coincidence, and I am not satisfied that the disconnection was a software upgrade glitch. The tenant was not given notice of the removal of the service, and made requests for reconnection. The tenant's request for compensation includes loss of the essential service of the entry phone, and limiting the tenant's guests. The tenant's witness testified that the landlord would only reappropriate the entry phone to the witness' phone, or disconnect it. The landlord had absolutely no right to give those options to a tenant who did not reside in the rental unit,

and had not resided there for several years. The tenant's written submission states that the tenant was without an entry phone for 13 months.

In the circumstances, I find that the tenancy was devalued by the actions of the landlord; it was no coincidence that multiple notices to inspect, or inspections without notice, and loss of the entry phone surrounded the notices to end the tenancy, which were not successful. However I do not accept that the tenant has established any of the per diems claimed. There is no explanation or correlation of the percentages claimed other than the written submissions of the tenant stating that 75% was due to harassment experienced by the tenant which was more intensive than the period where 25% is claimed.

I find that the tenant has established a claim of $2,700.00 for aggravated damages, including loss of the entry phone.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the Residential Tenancy Act in the amount of $2,800.00.

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 31, 2022

Residential Tenancy Branch