Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, LRE

Introduction

This hearing dealt with an application by the tenant disputing a rent increase and seeking a monetary order and orders compelling the landlord to comply with the Act and suspending or setting conditions on the landlord's right to enter the rental unit. Both parties participated in the conference call hearing.

Issues to be Decided

Can the tenant dispute the notice of rent increase?
Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to comply with the Act?
Should the landlord's right to enter the rental unit be restricted?

Background and Evidence

The parties agreed that the tenancy began in 1996 and that the rental unit is a second floor apartment.

The tenant seeks to dispute a notice of rent increase. She testified at the hearing that she has not yet received the notice but anticipates that it will be served sometime soon. She stated that in light of the incidents described below, the landlord should not be entitled to impose a rent increase.

The tenant also seeks an order that the landlord comply with the Act and tenancy agreement. She stated that she wants assurance that the new management in place at the subject building will not treat her in the same way as had the former resident manager, K.R. The landlord stated that he is well aware of his obligations under the *Residential Tenancy Act* and asserted that as K.R. is no longer in the employ of the landlord and vacated the building in February 2012, the tenant can expect no further difficulties with him.

The tenant also seeks an order suspending or setting conditions on the landlord's right to enter the rental unit. She testified that because K.R. had illegally entered her unit, she was concerned about further illegal entries. The landlord stated that while he appreciated the tenant's concerns given the history of her interaction with K.R., the landlord's agents still required access to the unit for purposes of routine inspections and addressing emergencies.

The tenant advanced a monetary claim against the landlord to compensate her for loss of quiet enjoyment and breaches of the Act and tenancy agreement. The tenant testified that K.R. lived immediately below her unit for several months and during that time, specifically from November 2011 – February 2012 inclusive, he made an unreasonable amount of noise, leaving his television and stereo blaring, hammering, slamming doors, yelling and banging on the walls and ceiling. She stated that at times, she was unable to watch her own television without increasing the volume to an excessive level and that her sleep was affected when the noise occurred at night. She testified that a number of times she telephoned the head office on the day following excessive noise to report it, but that it appeared the corporate landlord did not act on her complaint. The tenant provided a copy of a letter dated January 27, 2012 (the "January Letter") in which she complained about the noise in writing.

S.W. was the agent who represented the landlord at the hearing. S.W. testified that the head office has a 24 hour answering service which would relay matters to an agent who would immediately contact the complainant. He denied having received telephone calls prior to January 2012, but questioned why the tenant did not report the problems as they were occurring. S.W. claimed that had the tenant reported the noise incidents as they occurred, a representative of the landlord could have determined the source of the noise and verified that it was indeed K.R. who was causing the disturbance and the extent of that disturbance. S.W. testified that he did not receive any written communication from the tenant about noise until he received the January Letter. He acknowledged that the head office had received a telephone call from the tenant in early January complaining of noise, but denied having received any earlier communication. S.W. did not explain what actions were taken upon receiving the January telephone call.

The tenant had previously served as a resident manager for the subject building and acknowledged that she was aware of the 24 hour answering service, but stated that she chose to wait until working hours to telephone.

The tenant alleged that K.R. and another tenant in the building smoked marijuana in the building from September 2011 – February 2012. She claimed that the smell was overpowering in her suite as well as in the hallways and stairwells. She testified that she spoke with K.R. about the smoke and that he blamed other tenants and promised to

address the issue. The tenant provided a copy of a letter dated October 3, 2011 (the "October Letter") in which she complained about the smell of marijuana. In her oral testimony, the tenant stated that she sent this letter to the landlord via regular mail while in her written narrative, she claimed to have faxed the October Letter. She also claimed to have telephoned the head office to report the smell of smoke.

The landlord's agent denied having received the October Letter. The landlord provided a written statement in which he stated that in November, a former resident manager, D.C., was sent to the building to assess its condition and determine whether K.R. was adequately performing his duties. D.C. was also made aware of the complaints of marijuana use. In a written statement, D.C. stated that she walked throughout the building and while she smelled cigarette smoke, she was unable to detect the smell of marijuana.

The tenant alleged that K.R. harassed, intimidated and verbally abused her and that he threatened her with eviction. She further claimed that he uttered a death threat against her. She stated that K.R.'s harassment began in September 2011, shortly after he assumed his role as the resident manager, when he confronted her mother and son, attempted to bar them from entering the building and threatened to evict the tenant. Later the same day, K.R. apologized for the incident. In the following month, the tenant and K.R. had another verbal altercation in which K.R. advised that he had received a noise complaint about the tenant. The incident ended with K.R. shouting at her. The following day, the tenant telephoned the head office to report the incident.

The tenant testified that in October, the tenant was told by another party that K.R. had said, "I hear [the tenant] has written to complain about us smoking pot in our apartment. Well, you know what happens to people who rat on others ... they get killed." The tenant testified that she was fearful of repercussions and did not report the incident until a month later, when she called the police. She claimed that the RCMP confirmed that a threat had been made and that they told K.R. not to have further contact with the tenant.

At the hearing, the tenant confirmed that the timeline of events included with her application included all the major events she characterized as harassment. In addition to the aforementioned incidents, the timeline stated that in November, 4 days before she telephoned the police to report the alleged death threat, she complained to K.R. about marijuana smoke and when he appeared to be impaired and blamed the smell on other tenants, the tenant was left "shaking and so upset that I was almost in tears". The timeline further stated that at the beginning of January, K.R. confronted the tenant, told her to keep her dog on a leash and advised that he had reported her to the corporate landlord. The timeline provided no further mention of interactions between K.R. and the tenant.

The tenant confirmed that K.R. was not placed under a no contact order until the end of February.

The landlord's agent testified that the head office became aware of the September altercation between K.R. and the tenant and that at that time, they advised K.R. to minimize further contact with the tenant.

The agent acknowledged having been told by the tenant about the threat made by K.R. and said that the head office contacted K.R. and were told by K.R. that his comment was a joke. He was advised that it was inappropriate.

The parties agreed on the details of events which took place in February 2012. The tenant was away from the rental unit from February 7 – 18 and upon her return, discovered that her door frame and lock had been replaced and a business card from an RCMP constable in the door. Through conversations with other tenants, the tenant discovered that K.R. and another party had kicked in her door. The tenant obtained a key to the new lock on the same night she arrived and when she entered the rental unit, she found evidence that the unit had been searched, with drawers and cupboards having been left open and paperwork having been moved.

The following day, D.C. came to the rental unit to advise that she was the interim resident manager and she assured the tenant that the lock would again be changed and that at some point, the door frame would be repaired and a door chain properly installed. D.C. further advised that K.R. had been asked to resign and would be leaving the building as would the party who assisted in the break-in. The lock and door chain were replaced on February 20 and in March, the tenant arranged for the door frame to be repaired and was reimbursed by the landlord.

I note that the tenant provided a detailed description of the events which she believed took place during her absence from the building, assembled from hearsay statements by other tenants and the RCMP.

The tenant testified that upon returning home and for the remaining 2 weeks in February, she lived in fear because K.R. and the party who had assisted him in breaking into the rental unit were still residing in the building. She expressed her concern that K.R. would break into her unit again and perhaps harm her dog. She was also concerned because she believed that K.R. had full access to security cameras and could monitor her movements in the building.

The tenant alleged that the landlord had failed to respond quickly or adequately to the break-in. She further stated that D.C. did not reside in the building after having

assumed the responsibilities as the resident manager, but stayed for just 6 nights and could not have properly monitored the building while K.R. was still residing therein.

The landlord's agent offered an apology for the events and in particular, apologized that management had not contacted the tenant until the day after her return. The agent stated that the locks on the unit were changed immediately and a key left with a trusted neighbour, but acknowledged that at the very least, management should have left a note on the door of the rental unit. The agent testified that upon learning of the situation, K.R. was immediately asked for his resignation and asked to vacate the building and that he complied with both requests.

The tenant's monetary claim includes a claim for recovery of legal fees and the cost of sending documents to the landlord via registered mail.

Analysis

The claim disputing the rent increase is dismissed as the tenant has not yet been served with a notice of rent increase. If the tenant is served in the future with a notice of rent increase which does not comply with the Act, she is free to dispute it. However, I note that section 43(2) provides that a tenant may not dispute a rent increase that complies with the Act and there is no provision under the Act which prevents a landlord from implementing a rent increase even if the tenant believes he is not complying with his obligations under the Act and the tenancy agreement.

I find on the evidence that although there was clearly an illegal entry into the rental unit by the former resident manager, there is no evidence whatsoever that the current resident manager or any of the other landlord's agents are likely to enter the unit illegally. I find insufficient evidence to warrant placing restrictions on the landlord's right to enter the unit and the evidence leads me to believe that the landlord and his current agents have every intention of complying with the Act. I therefore dismiss the claims for orders compelling the landlord to comply with the Act and suspending or setting conditions on the landlord's right to enter the rental unit.

Turning to the monetary claim, the tenant kept a detailed diary of when she was disturbed by noise from K.R.'s unit. However, I am not satisfied on the evidence before me that she specifically complained about noise prior to her telephone call to the head office in early January. Although there was some communication which took place between the tenant and the head office prior to that date, I am not satisfied that it addressed the issue of noise. While I accept that K.R. was making an unreasonable amount of noise in a direct effort to disturb the tenant, I find that there is insufficient evidence to prove that the tenant attempted to mitigate her losses by contacting the

head office prior to January. Given the tenant's inconsistency in relating how she served the October Letter, having stated in writing that she served it via fax and verbally that she sent it by regular mail, I am not persuaded that the landlord received the October Letter. However, I note that in any event, in the October Letter there is no mention of noise coming from K.R.'s unit. I therefore find that the tenant is limited in her recovery to loss of quiet enjoyment in January in which there were disturbances on 23 days and February in which there were occurrences on 3 days.

I find that the tenant has not established her claim for disturbance resulting from marijuana smoke. The tenant did not provide any evidence to show that the building is a non-smoking building and I accept the evidence of the landlord's agent that D.C. was sent to investigate the complaint in November and was unable to detect the distinctive odour of marijuana. The tenant was aware that the after-hours answering service would contact the landlord and arrange for an immediate response, but she chose not to use this service and instead reported incidences of alleged marijuana use at times when the use could not have been verified. This deprived the landlord of the opportunity to properly investigate the tenant's complaints. For this reason, I find insufficient evidence to support an award for this claim.

The tenant claimed that K.R. harassed and intimidated her and provided details of specific instances. The tenant confirmed that the details in her written narrative included all of the major instances of harassment, and I take the adjective "major" to indicate that other instances were not sufficiently grievous so as to warrant complaint. Excluding the alleged death threat, the tenant confirmed just 4 instances of harassment. I find the instance in which the landlord barred the tenant's family from entering the building to constitute intimidation and harassmen, but I am unable to find that the other instances can be characterized as harassment.

The tenant alleged that the landlord shouted at her when he advised her of a noise complaint which had been made against her. While shouting may have been an inappropriate means of communication, I am not persuaded that it is harassment.

In November, the tenant made a complaint to K.R. and he attended at the rental unit while impaired in some way. There is no indication that he did anything threatening or intimidating and it is unclear why his obvious impairment would have caused the tenant to suffer the emotional reaction she claimed to have experienced. In the remaining incident, the tenant apparently had her dog off its leash inside the building and was asked to keep the dog on the leash. While K.R. may have spoken harshly, his words do not appear to be threatening and it would appear that his comment about the dog needing to be leashed in the building was warranted. The tenant acknowledged that K.R. was not bound by a formal no contact order at the time this incident occurred.

On the evidence before me, I find that the tenant has proven just one instance of what can be characterized as harassment and intimidation, that being the incident which occurred in September.

The tenant's claim for compensation for what she described as severe emotional and mental distress when she heard that K.R. had threatened her life is somewhat problematic. K.R. did not communicate this threat directly to the tenant; rather, the tenant heard of it through another source. There was no one at the hearing who provided direct evidence of the threat and I am unable to give this hearsay evidence any significant weight. The tenant provided further hearsay evidence that the RCMP told K.R. not to have further contact with the tenant, but she acknowledged that a formal order was not issued and did not provide a copy of a police report indicating that the police found that a threat had been made.

Because the landlord's agent acknowledged that someone in the head office spoke with K.R. about his remark, it seems clear that some kind of inappropriate comment was made, but I am unable to determine whether it was as serious an offense as was alleged by the tenant or that it resulted in the extreme distress she described.

At the hearing, the tenant likened herself to an abused spouse who fears repercussions from the abuser and offered this as the reason why she did not report the threat to the police earlier. I do not find this argument persuasive, because not only did the tenant wait for a full month before reporting the alleged threat to the police, just 4 days before having reported it, she directly confronted K.R. about his alleged marijuana use. I find it unlikely that a person who was as fearful of repercussions as the tenant claimed to be would dare to confront a person who had threatened her life. I find it more likely that the tenant finally reported the remark because she was frustrated by K.R.'s actions in other respects.

For these reasons, while an inappropriate remark was likely made, I am not persuaded that the tenant suffered the emotional distress or loss of quiet enjoyment claimed and I therefore find no basis for the award claimed.

The fact of the break-in by the K.R. is undisputed. The tenant's privacy and security were clearly violated by the K.R., who as an agent of the landlord, owed the tenant a duty of care to protect her interests. I find that the break-in and search of the rental unit resulted in the tenant's legitimate fear for her own security and well-being and that she lost quiet enjoyment of the rental unit for a period of time. I accept that the landlord acted quickly in addressing the situation and while the tenant may have wished that K.R. had been immediately ousted from the building, had the landlord not obtained

K.R.'s agreement to vacate, a legal process to evict him would have likely taken longer than the 2 weeks in which it took him to vacate under his agreement with the landlord.

The tenant suffered a transient shock as a result of K.R.'s actions and I find that as a result, even though she was able to reside in the unit and keep her belongings there, her tenancy had a negative value for a period of time.

I find that the tenant is entitled to compensation for loss of quiet enjoyment due to K.R.'s excessive noise on 26 occasions in January and the first few days of February, for an incident of harassment in September and for the February break-in. I find that a global award of $1,558.00, which represents 2 months' rent, will adequately compensate the tenant.

The claim for recovery of legal fees and the cost of registered mail is dismissed as under the Act, the only litigation-related expense I am empowered to award is the cost of filing fees.

Conclusion

I award the tenant $1,558.00. The tenant is free to apply this award to future rent owed to the landlord, but I also issue a monetary order under section 67 in the event the tenancy does not continue. This order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: June 1, 2012

Residential Tenancy Branch