Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, DRI, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause; to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord's agent and the owners attended the conference call hearing. The original hearing was adjourned as more time was required to hear evidence. The hearing was reconvened on today's date as scheduled. The parties attending gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided a large amount of documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and is considered in this decision.

At the outset of the hearing the tenant withdraws her application to cancel the One Month Notice for cause.

Issue(s) to be Decided

- Is the tenant entitled to dispute an additional rent increase?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on June 01, 2011 although the tenant moved into the unit on May 05, 2011. Rent for this unit started at $2,150.00 and has increased to $2,327.00. Rent is due on the first day of each month in advance. The tenant paid a security deposit of $1,075.00 and a pet deposit of $1,075.00 on April 20, 2011.

Dispute of additional rent increases

The tenant testifies that the rent has increased for this unit by $92.00 per month in 2012 and by $85.00 per month in 2013. The tenant testifies that when she viewed the unit there was a frame for a gazebo on one of the patios. The tenant testifies that she discussed this frame with the landlord's agent and was told she could either replace the canvas or get a different gazebo if she became the tenant. On May 25, 2011 the tenant put up a different gazebo on the terrace. The tenant was told to remove the gazebo by the strata and an infraction letter was sent to the tenant from the Strata Corporation. The tenant then replaced the Gazebo with a different type which after a lengthy period of discussions, e-mails and Supreme Court actions this second Gazebo was removed by the Strata in 2013.

The tenant is aware the landlords are entitled to make rent increases. However, the tenant testifies that as she can no longer use her outdoor spaces as the gazebo has been removed, then the tenant is paying rent for four patios that she can no longer use without protection from the weather. The tenant testifies that one patio cannot be used as pets are not allowed on that patio and the tenant's cat goes everywhere with the tenant. The tenant therefore seeks to recover the additional rent increases due to the loss of her patios through the actions of the Strata and the stress and aggravation caused by the Strata.

The landlord's agent testifies that the tenant has received legal rent increases each year. If the tenant cannot use the patios then that is the tenant's choice. Patios are generally seasonal as with any other complex. The landlord's agent testifies that the tenant still has four patios to use but chooses not to use them since her gazebo was removed by the Strata. The gazebo was removed as the tenant was in violation of the Strata bylaws by erecting the gazebo without permission. The landlord's agent testifies that there was not a gazebo in place at the start of the tenancy but rather a frame for an awning so the tenant has not lost any facilities included in the tenancy agreement. The tenant has a right to end the tenancy if she is unhappy with her living space. The rent charged is within current market rents for the location and square footage.

Loss of quiet enjoyment

The tenant raised the following issues which the tenant states constitute harassment resulting in a loss of quiet enjoyment of the rental unit:

The tenant testifies that when she viewed the unit there was a frame for a gazebo on one of the decks. The tenant testifies that she discussed this frame with the landlord's agent and was told she could either replace the canvass or get a different gazebo if she became the tenant. On May 25, 2011 the tenant put up a different gazebo on the terrace. The tenant testifies that her rights were denied to present her case before Strata. The tenant testifies that further infraction letters came concerning the gazebo.

The tenant engaged the services of lawyer and spent many hours on preparing and presenting cases in Supreme Court against the Strata Corporation, the City and the unit owners. The tenant testifies that the landlord did not support the tenant in this action.

The tenant testifies that the landlord did not want to represent the tenant at a hearing with the Strata and the landlord's agent informed the tenant that she did not want to waste her personal time attending hearings for the tenant. The landlord did not arrange a hearing for the tenant to meet with the Strata to deal with the issues concerning the

gazebo in a timely manner. When the tenant eventually got a hearing before the Strata in January 2012 the landlord's agent did attend with the tenant however did not support the tenant during this hearing.

The tenant testifies that she was receiving an abundance of mail from the Strata, the City and the landlord concerning these issues over the gazebo. The tenant testifies that the landlord did not have to send copies of each letter again to the tenant as it should have been clear to the landlord that the tenant had already received the letters. The tenant testifies that the excessive amount of mail and notices were a form of harassment and were sent by post, by email and by posting them on the tenant's door.

The tenant testifies that she was served Notices to End the Tenancy for cause by the landlord. The tenant disputed the first Notice and a hearing was scheduled with the Residential Tenancy Branch. However as the tenant had already filed an application before the Supreme Court the Residential Tenancy Branch declined to hear the tenant's application. The tenant testifies that the landlord served the tenant with another Notice to End Tenancy despite knowing that the Residential Tenancy Branch would not deal with the matter as it was still before the Supreme Court.

The tenant testifies that another letter came from the landlord regarding a change to the Strata bylaws with regards to smoking. The landlord only provided the new bylaw and a copy of all the bylaws were not provided at that time. The landlords did not know the Strata bylaws which they have a responsibility to know.

At a Supreme Court hearing was held and a Consent Order was made. However, later as the tenant had not yet removed the gazebo the Strata filed a contempt of Court against the tenant which was dismissed because the tenant testifies she had abided by the Consent Order and removed the gazebo to a different area of the patio.

The tenant testifies that the Strata removed the gazebo themselves on June 24, 2013 and the tenants belongings contained within the gazebo were also removed. The tenant

testifies that the landlord did not assist the tenant in retrieving her belongings on the days the tenant was able to get a truck and this led to more stress and harassment of the tenant. When the tenant was eventually able to retrieve her belongings she had to carry these herself while the landlord's agent and building manager watched. The tenant testifies that there was a total disagreed for the tenant's rights.

The tenant testifies that the landlord had sent an email informing the tenant that Strata were replacing the gates and required the owners to put padlocks on their gates for security. The tenant had responded to the e-mail saying that as it was the owners' requirement she was not prepared to put a padlock on the gate herself. The tenant testifies that on August 13, 2013 she came home and found a padlock had been placed on her gate and she was unable to access her unit that way. The tenant went to the concierge for the building to see if he had a key but no key had been left for the tenant. The tenant had to then have the padlock cut off. An email was received by the landlord asking the tenant about the padlock and asking the tenant to purchase a new one if she had cut the other padlock off. The tenant responded and told the landlord that if they put a padlock on then they are required to provide a key. Later the landlord did provide a new padlock and key to avoid the owners being fined by the Strata.

Due to ongoing harassment suffered by the tenant the tenant seeks to recover $25,000.00 in compensation from the landlord.

The owner of the rental unit testifies that they have the rental unit professionally managed and yet the tenant has charged the owners with harassment. The owner testifies that virtually none of the paperwork sent to the tenant originates from the owners but came from the Strata and the City. The owner testifies that they were not involved in the Supreme Court actions and have been extremely patient with the tenant throughout all of this trouble over the gazebo.

The owner testifies that they have passed on the bylaw infraction Notices from both the Strata and the City and the two Notices to End Tenancy do not constitute harassment

as they were served to the tenant because of the tenant's refusal to abide by the Strata bylaws. The owner testifies that due to the raising costs for Strata and Taxes they have to increase the rent under the *Act*.

The landlord's agent testifies that they have never harassed the tenant with letters but are obligated to pass on any bylaw infraction letters from Strata and from the City along with any Orders. The Eviction Notices were given to the tenant under the *Act* as is the landlord's right to do so because of the tenant's non compliance with the bylaws. The landlord's agent testifies that at the start of the tenancy there was a metal frame located on the terrace used for a fabric awning. The fabric was worn and needed replacing. The tenant was told that the owners would repair the awning or replace it with something better, only upon approval of the Strata. This awning was definitely not a gazebo. The tenant said she wanted the awning frame removed so she could install something else and was again told that the Strata would have to approve anything she wanted to put up.

The landlord's agent testifies that the tenant was denied a hearing with Strata. The landlord's agent emailed Strata requesting that the tenant be heard and asked the Strata to advise when a hearing will take place. The reason the Residential Tenancy hearing was cancelled was because they asked that the tenant meet with the Strata council first. The landlord's agent testifies that they requested two meetings with the Strata on behalf of the tenant; the tenant does not have rights to attend meetings unless represented by the landlord or owners. Eventually a hearing was scheduled on January 25, 2012. At that hearing the landlord's agent did attend to just support the tenant but not to take part in the hearing. The landlord's agent denies ever saying to the tenant that she would not waste her personal time attending a hearing. After that hearing a Strata decision was made and a letter was sent to the tenant. This also stated that the owners would be fined $200.00 a week if the tenant did not remove the gazebo as it was in contravention of section 5.1 of the bylaws.

The landlord's agent testifies that the City then became involved as the tenant did not have a permit to erect the gazebo. The City threatened to fine the owners $5,000.00 or requested that the tenant get a permit. The permit would not be issued without approval of the Strata and as the Strata did not approve the gazebo the city would not issue a permit. The landlord's agent testifies that this had nothing to do with the landlord but was between the tenant, the City and the Strata.

The landlord's agent testifies that further letters, emails and orders were received and forwarded to the tenant. The landlord also asked the tenant to comply with the bylaws but the tenant still refused to remove the gazebo. When the second eviction notice was issued this was after a letter from the Strata saying they had to either evict the tenant or remove the gazebo or the landlords would be fined $200.00 a week. The tenant was again reminded that she had agreed to comply with the Strata bylaws when she signed the tenancy agreement but failed to do so by her refusal to remove the gazebo.

The landlord's agent testifies that after the City issued an Order to the tenant it was the landlords who requested an extension of that Order as a Residential Tenancy hearing was due to take place. This extension was granted. The landlord's agent testifies that they did what they could to assist the tenant but it was the tenant's refusal to comply that resulted in the continuation of the letters, emails and Orders. The landlord's agent testifies that they have no control over the Strata or the City if a tenant does not comply with bylaws.

The landlord's agent testifies that she sent the tenant a letter confirming the new bylaw regarding smoking. The landlord's agent attended the AGM meeting and was then required to inform the tenant of any changes to the bylaws.

The landlord testifies that they were sent a copy of the Consent Order made in Supreme Court. They were told the tenant had breached one term of this Order but the landlord was not told which term as the Strata said it was confidential. The landlord's agent testifies that as landlords they had no involvement in this.

The landlord testifies that the tenant acted rudely to the building manager and was very angry over her belongings. The tenant demanded to pick up her belongings that afternoon when there was no one available from the building management to release the tenant's belongings. Again this was out of the landlord's control. The tenant was asked by e-mail to stop yelling at the building manager and to be calm and respectful. The tenant responded to this email with an angry e-mail. The Strata had requested that the landlord's agent be present when the tenant collected her belongings as the tenant was so rude to the staff. The landlord gave the tenant a time to meet the next day but that did not work for the tenant. Other dates were also discussed but the tenant wanted to do it that afternoon. The tenant made threats to call management every minute until she got what she wanted and eventually a time was scheduled and the tenant retrieved her belongings.

The landlord's agent testifies that the Strata installed new gates to increase security and informed everyone that they must put padlocks on the gates. When the tenant was emailed about this she refused to put a padlock on her gate so the landlord informed the tenant that they would do so. A key was given to the concierge at that time but this was not passed onto the tenant and the tenant proceeded to cut the lock off. This was not necessary as the tenant could have accessed her unit through another door. The tenant would not replace the padlock so the landlord issued a new one and left it with a key by the tenant's door.

The landlord's agent refers to the tenant's previous lawyer's email to the Strata in which he acknowledges it is the Strata who has interfered with the tenant's rights and interfered in the relationship between the landlord and tenant. The tenant herself wrote to the owners and said that she cannot imagine they are happy with the situation she has dragged them into. The owners now have a bill from the Strata for over $1,400.00 to have the gazebo removed because the tenant would not comply. The tenant also sent the owners an email saying that she loves the townhouse and would consider buying it. The landlord's agent questions why would the tenant want to purchase the unit if she was so unhappy living there.

The tenant testifies that whether or not she offered to buy the townhouse from the owners has no bearing on her loss of quiet enjoyment. The tenant testifies that the landlord's agent had no idea what was going on with the tenant's belongings and should have done her utmost to help the tenant retrieve her belongings when the tenant had a truck available.

Analysis

There has been a substantial amount of evidence provided by both parties for this hearing. All of the evidence has been considered however the majority of the evidence is related to issues that are not before me but issues that were dealt with by the Supreme Court. My decision reflects the relevant evidence and testimony for the tenants claim for this hearing only.

Having reviewed the relevant evidence, I will first determine the tenant's claim to dispute an additional rent increase. The tenant agrees that a lawful rent increase has been given in 2012 and 2013. The tenant seeks to have these set aside and to recover the additional rent paid due to the loss of use of the patios at the rental unit.

The parties disagree as to what was erected when the tenant viewed the unit. The burden of proof falls to the tenant to show that a pre-existing gazebo of the same size and type was on the deck at the start of the tenancy. The tenant has provided insufficient evidence to show that the structure in place was not more than a frame and fabric for an awning and therefore any further structure the tenant erected would have to have approval from the Strata before the tenant erected anything else. The tenant did not obtain approval for either of her gazebos and therefore was instructed to remove them.

I find the tenant cannot now hold the landlords responsible for the loss of use of her four patio areas as:
a) the offending gazebo was only located on one patio,

b) the tenant has a right to still use the patios but chooses not to exercise that right for reasons of her own, and

c) the landlords have not withdrawn a service or facility that could warrant a reduction in rent or for me to award the additional rent paid since the rent increases were imposed, back to the tenant.

The tenant's application to dispute the additional rent increases is therefore dismissed.

With regard to the tenants claim for harassment by the landlord and a loss of quiet enjoyment of the rental unit under section 28 of the *Act;* I refer the parties to the Residential Tenancy Policy Guidelines # 6 regarding the covenant of quiet enjoyment which states, in part, that:

The *Act* establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had 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 for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control. This Guideline also goes on to discuss harassment and states; harassment is defined in the Dictionary of Canadian

Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.

With the above in mind I find the tenant has failed to show that the landlord has not protected the tenant’s right to quiet enjoyment. I make this decision based on the following reasons:

- The tenant did not get approval to have the gazebo erected and so ultimately entered into this grievance with the Strata through her own actions. The landlord cannot be held responsible for the actions of the Strata as it is beyond the landlord’s control.

- I find from the evidence presented that the landlord did take sufficient and reasonable steps to represent the tenant and arranged a hearing with the Strata. A landlord does not have to take part in a Strata hearing if they choose not to as this hearing was instigated by the tenant. The landlord has provided evidence of the e-mails sent to Strata requesting a meeting and of the Strata’s response to this. With regard to the tenant’s claim that the landlord’s agent refused to attend a hearing as she did not want to waste her personal time; this is one person’s word against that of the other and as the tenant has the burden of proof in this matter then I find that the burden of proof has not been met.

- The tenant felt that she was being harassed by the multiple letters, emails and Orders being sent in duplicate or triplicate. A landlord is required to ensure that the tenant has sight of any letters sent to the landlord or owners regarding an issue of non compliance by the tenant along with any other documents received from the City, lawyers or Courts. This does not constitute harassment but rather the landlord doing their due diligence as they may not have prior knowledge that the tenant had already received these letters and Orders. By providing these

copies of the letters and Orders the landlord ensured the tenant has sufficient information regarding the resolution of the matter concerning the gazebo.

- Concerning the One Month Notices to End Tenancy served upon the tenant. A landlord has a right under s. 47 of the *Act* to issue Notices of this nature if the tenant has not complied with a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so. A landlord may issues as many notices to end tenancy as they see fit even if they are wrong. The tenant then has a right to dispute any Notice to End Tenancy. This does not constitute a breach of the covenant of quiet enjoyment.

- Based on the evidence provided in regard to the retrieval of the tenant's belongings and gazebo once removed by the Strata; the tenant had been given ample opportunity to remove the gazebo herself and failed to do so. If the tenant had removed the gazebo then the tenant could have secured her belongings contained in the gazebo which were later removed by the Strata. I find there is insufficient evidence to determine that the landlord did not assist the tenant to recover her belongings. I find the landlord did attempt to set up times and acted as a go between for the building manager, Strata and tenant. I am unable to find that the landlord did not assist in this matter because the landlord did not help the tenant carry her belongings upstairs. Furthermore I find from the tone of the e-mails that the tenant was rude to staff. This appears to be a conflict between the tenant, the Strata and the building managers and the tenant cannot hold the landlord responsible.

- From the evidence provided I find the landlord issued an e-mail to the tenant notifying the tenant that a padlock was required to be put on the gate. The tenant chose not to do this, so one was put on by the landlord to protect the owners from further fines by the Strata. The landlord's agent has testified that a key was left for the tenant; the tenant has testified that no key was left. The tenant then

cut of the lock instead of using another access into the unit. The landlord complied with the Strata's request to put a padlock on the gate and in so far as whether or not a key had been left or why a key was not given to the tenant if it had been left, then again this becomes one persons word against that of the other and the tenant has not met the burden of proof that the landlord locked the tenant out.

- I can find no basis in the tenant's claim that she has been harassed by the landlord. There is insufficient evidence to show that the landlords have engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

I find the tenant has waged a fight against the Strata and the City concerning the gazebo and blames the landlord for not protecting her right to quiet enjoyment. As this matter could have been resolved quickly if the tenant had complied with the Strata bylaws or City bylaws then many of these problems affecting the tenant could have been resolved amicable resulting in the tenant being given permission to erect some kind of structure that did conform to the Strata bylaws on her roof terrace or other patio. This would have created a more peaceful environment for the tenant to reside in. Instead the tenant decided to fight the Strata and took the matter to the Supreme Court which resulted in an extension of time for this matter to be unreasonably delayed. While a tenant has a right to fight for any issues she feels is unfair or unlawful the tenant cannot expect a landlord to protect her argument against a bylaw simply because they are her landlord as bylaws are in place to protect all the owners of the building.

Conclusion

The tenant's application to dispute an additional rent increase is dismissed without leave to reapply.

The tenants claim for a Monetary Order for $25,000.00 in compensation for a loss of quiet enjoyment and harassment is also dismissed without leave to reapply.

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: November 19, 2013

Residential Tenancy Branch