Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LUMBY AND DISTRICT SENIOR CITIZEN'S HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with a tenant's application for monetary compensation against the landlord for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter – Amendment of Application

In filing her application on April 21, 2015, the tenant indicated she was seeking compensation for loss of quiet enjoyment in an amount equivalent to eight months of rent, or $1,940.00. The Application was served upon the landlord by registered mail sent on April 21, 2015. Then by way of written submissions accompanied by additional evidence submitted to the Branch on September 3, 2015 the tenant indicated she was seeking compensation of $1,225.00 for loss of quiet enjoyment; resettlement costs of $975.00; healing costs of $2,060.00; and, moving costs of $718.50 for a total of claim of $4,978.00. These additional submissions were also served upon the landlord via registered mail in September 2015.

The Rules of Procedure provide for the manner in which an application may be amended. The Rules of Procedure were developed, in part, to ensure a procedurally fair dispute resolution proceeding. With respect to amending an application, Rule 2.11 provides, in part:

- If the application has been served, a copy of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.
- An amended application must be clearly identified, and be provided separately from all other documents. All evidence to support an amended application must be served on the other party and submitted to the Residential Tenancy Branch at

> Residential Tenancy Branch the same time as the amended application is served and submitted. (See Rule 3 – Serving the Application and Submitting and Exchanging Evidence).

Parties may access additional and practical information as to how to amendment their application by contacting the Residential Tenancy Branch or accessing the Branch website which provides the following instructions for amending an application:

- Make any changes on the application form – initialling each one
- Write "Amended" and the date of the amendment on the first page of the application
- Provide each respondent and the Residential Tenancy Branch with copies of all evidence to support the amendment at the same time as you provide the amended application form (it's a good idea to also provide a separate page that lists the changes between the original and the amended versions)
- File the revised application with the Residential Tenancy Branch so that it is separate from all other material, including evidence that supports the amendment(s)

[As written on the RTB website]

The tenant did not amend her application in accordance with the Rules of Procedure since her application was not changed and not served separately from additional evidence. The tenant's advocate acknowledged that in filing the additional submissions on behalf of the tenant she did not first seek out information as to how to amend a claim already filed and served on the other party.

The landlord's representatives stated that they understood the tenant was seeking compensation calculated as her monthly rent for eighth months as that was clearly indicated on the application they were served and the landlord had submitted a response to that claim. However, the landlords were of the position that they did not understand the relationship the amounts appearing in the written submission had to the amount claimed on the application.

Options for dealing with the tenant's failure to amend the application properly were explored and the tenant stated that she wished to proceed with the hearing based upon the claim she original filed and served. Accordingly, the tenant's application was not amended and her claims, as originally filed, were heard and have been decided by way of this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to receive compensation from the landlord for loss of quiet enjoyment in an amount equivalent to eight months of rent that she paid?

Background and Evidence

The landlord is a society run by volunteer board members that provides housing with subsidized rents to senior citizens and disabled persons. The subject tenancy started in January 2014 on a month-to-month basis. The tenant was required to pay subsidized rent in the amount of $245.00 per month which adjudged to $250.00 starting January 2015. The tenancy ended May 31, 2015.

The tenant seeks compensation from the landlord for loss of quiet enjoyment in an amount equivalent to her monthly rent for eight months. In summary, the tenant was of the position the landlord failed to take sufficient action to protect her right to quiet enjoyment.

Aside from verbal testimony during the hearing, both parties provided a significant volume of documentation concerning this dispute including many communications exchanged between the parties. I have considered all of the evidence provided to me; however, with a view to brevity I have summarized the parties` respective submissions below.

The tenant and the tenant in the adjacent unit (referred to as “W” hereafter) had a cantankerous relationship which included both tenants complaining to the landlord about the other’s behaviour or conduct starting in August 2014.

The tenant stated that W would disturb her by banging the walls, slamming doors, and whistling “24/7”. When probed further, the tenant explained that, to her, “24/7” meant the disturbances occurred at random times and at any time of the day or night. The tenant explained that such conduct was especially disturbing when she was trying to sleep as her bedroom wall was a common wall between her unit and W’s unit. The tenant stated that she tried approaching W about the disturbances in an effort to resolve the issues but she received a letter from the landlord dated August 25, 2014 indicating the landlord had received complaints that the tenant was harassing W. After receiving the landlord’s letter of August 25, 2014 the tenant directed her complaints concerning W to the landlord, usually via email.

In her written response to the landlord the tenant suggested the landlord hire a social worker to resolve disputes and/or conduct a hearing. The tenant submitted to me that many of her complaints to the landlord went unanswered. Further, the tenant submitted that the landlord did not invite her to any board meetings so that she may voice her concerns.

The tenant testified that at times the disputes with W improved although it was never completely resolved in her view. However, in March and April 2015 it deteriorated further in March and April 2015 when W drove toward her with his scooter, broke her flower pot, and board in her garden plot was dislodged. In April 2015 she called the police for assistance after which time the situation improved, although not completely in her view. The tenant submitted that the police had advised her that she should put W on notice that she could have him charged with harassment or mischief. I was not presented any evidence to suggest she pursued this option.

I noted that the tenant had only requested monetary compensation when she filed her application and had not requested orders for compliance. The tenant acknowledged that when she filed her application she had already decided that she was ending her tenancy.

In response to the tenant's submissions, the landlord described W as an 85 year old man who has resided at the property for several years. W has significant health and mobility issues and he has been in and out of hospital while waiting for an assisted living bed to become available. The landlord submitted that previous occupants who have resided adjacent to W's unit had not complained about his conduct and no complaints had been received from the tenant until the landlord put her on notice that they had received two complaints that the tenant was harassing W.

The landlord acknowledged that sounds of banging and slamming doors were a possibility given W`s mobility issues. The landlord submitted that banging heard by the tenant was likely from W transferring out of the bulky wheelchair or scooter to the toilet during the night. The landlord submitted that the W's door may slam because he closes it with a rope.

The landlord submitted that after receiving the tenant's response to their August 25, 2014 letter on September 1, 2014, via email, they did speak with W and the tenant and other neighbours and the landlord was of the understanding the problem was largely resolved as seen in the landlord`s letter to the tenant on September 10, 2014. Unfortunately, another complaint came from the tenant on October 18, 2014 when the tenant complained of W's dog barking. However, on October 21, 2014 one of the

landlord's agents recorded in the landlord`s records that W and the tenant and come to an agreement that included W taking his dog outside at 11:00 p.m. to relieve himself for the night. On November 27, 2014 and December 2, 2014 the tenant complained again of loud noises coming from W's unit which was followed by the tenant giving her notice to end her tenancy in December 2014.

W. subsequently had the dog euthanized which lead to several other tenants becoming unhappy about the tenant's conduct toward W and a petition circulated among the other tenants to have the tenant evicted. There are 19 signatures on the petition submitted to the landlord. The tenant responded by stating she had spoken to one of the tenants who signed the petition and that that person indicated he signed it without reading or understanding it.

The landlord was of the position that one of the difficulties they had with the tenant's complaints was that she would frequently write lengthy emails which would then have to go before the board and that some of her communications indicated that the problem had been settled.

The landlord was also of the position that the tenant's changing decision to end her tenancy also made the situation difficult to address effectively. For example, in December 2014 the tenant had given notice that she intended to end the tenancy at the end December 2014 or January 31, 2015; however, in January 2015 she changed her mind and requested her notice be rescinded, which the landlord permitted despite the long wait list for units at the property. The tenant also requested that she be permitted to move to another unit at the property instead. The landlord submitted that on two occasions, in January 2015 and March 2015, the landlord offered to move the tenant to another unit but that the tenant declined to accept the units offered to her.

The tenant denied receiving an offer to relocate to another unit in January 2015 but In the documentary evidence provided to me by the landlord is a request of the tenant that she be relocated to another unit and the landlord had recorded in its records that during a meeting with the tenant she indicated she would be moving from the property as she "did not fit in".

The tenant acknowledged that such an offer was made to her in March 2015. During the hearing, the tenant took issue that she would have to move to another unit and not W. The landlord explained that they did not offer a change of unit to W because he required a handicapped room and there were no other handicapped units available. Further, W was awaiting an assisted living bed in the community and the landlord was hesitant to displace him before such a bed was to become available.

With respect to the landlord`s offer for the tenant to relocate to another unit in March 2015, the tenant also stated that she did not have $200.00 that it would cost to relocate to another unit and because she had already decided to move away from the property by then.

The landlord stated that the landlord's agent had been in communication with the police after the tenant had called them and the landlord was of the understanding the matter was recorded as being a complaint of a broken clay pot which the police attributed to two neighbours being frustrated with each other.

Finally, the landlord pointed out that if the tenant wished to appear before the board all she had to do was request the opportunity and she was have been scheduled to appear.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The tenant asserts that the landlord breached the Act by failing to provide her with quiet enjoyment. The right to quiet enjoyment is provided under section 28 of the Act and includes freedom from unreasonable disturbance and freedom to use common areas without significant interference.

It is important to note that the legislation includes the words "unreasonable" and "significant". In keeping with rules of statutory interpretation, each word must be given meaning. Accordingly, I find the wording of this provision does not guarantee a tenant that he or she will not be disturbed from time to time or by sounds associated to normal daily activities. Certainly, a tenant living in multiple unit properties should expect to hear sounds coming from their neighbour`s unit and common areas with regard to the age and character of the building. Therefore, to establish a breach of quiet enjoyment, the

tenant would have to demonstrate there were disturbances that were unreasonable in the circumstances or that the interference they endured was significant.

In this case, the tenant asserted that she was disturbed by and suffered interference by another tenant residing at the property; yet, her claims are against the landlord. A tenant may hold a landlord responsible for loss of quiet enjoyment caused by another tenant in certain circumstances. Such circumstances are described in Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment*. Policy Guidelines provide policy statements developed in context with common law and rules of statutory interpretation, as applicable. Policy Guideline 6 provides, in part, that:

> 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.
>
> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

[reproduced as written with my emphasis added]

Upon consideration of the evidence before me, I acknowledge that the tenant likely suffered from disturbances and interference by; however, as outlined above, to succeed in a claim against the landlord I must be satisfied, in part, that the landlord sat idly by and permitted the offensive behaviour to continue. For reasons that follow, I find the evidence does not demonstrate that the landlord was inactive or sat idly by while permitting others to unreasonably disturb the tenant or significantly interfere with her ability to use common areas

It is important to note that while it is arguable that the landlord could have done more to resolve the dispute between the tenant and W the landlord is not obligated to do anything and everything that is possible. For example: the tenant requested the landlord hire a social worker, hold hearings with the involved tenants, and invite the tenant to speak at the board meeting; however, the Act does not obligate the landlord to

take such action. Rather, in my view, the landlord's obligation is to act reasonably and where disputes involve two tenants I see that as: receiving complaints from tenants, determining if there is merit to the complaint and whether the landlord has any control over the matter, and if so to take action that at is reasonable and within the landlord's control given the nature of the complaint.

In determining that the landlord did not sit idly by I noted that the evidence shows that the landlord spoke with W, the tenant, and other tenants after receiving complaints from the tenant. The landlord's agents also shared the tenant's complaints with its board members for further consideration and discussion. The landlord communicated with the tenant, verbally and in writing, concerning their understanding of the situation including correspondence that recognizes that the tenant had W had reached terms to improve their disputes. The landlord also offered the tenant the ability to relocate to another unit. The landlord made enquiries with the police after learning of the tenant had called the police. I also accept the landlord's position that the situation was further complicated by the tenant's position that changed from making complaints to indicating the situation improved and then giving notice to end tenancy only to request it be rescinded, which the landlord permitted the tenant to do for the tenant's benefit only. Therefore, I find the landlord acted reasonably in the circumstances and not indicative of a landlord that sat idly by.

I further find the tenant's case against the landlord is weak in that I find she did not take steps to mitigate losses. I make this determination considering:

- the landlord offered the tenant a different unit which the tenant declined to accept;
- the tenant did not request an appearance before the landlord's board members despite her position she should have had an opportunity to appear before them; and,
- in one of her first communications to the landlord she indicates that a hearing should be held to resolve the problems she was encountering; yet, she did not seek a dispute resolution hearing with the Residential Tenancy Branch until April 2015 when she was certain she was going to end her tenancy and in doing so she was only requested monetary compensation.

In summary, I have found that the landlord acted reasonably in the circumstances and did not sit idly by while the tenant suffered a loss of quiet enjoyment; and, the tenant failed to mitigate her losses. Accordingly, I find the tenant's request for return of all of the rent she paid for eight months to be unreasonable and unwarranted given the circumstances and I dismiss her claims against the landlord.

Conclusion

The tenant's application has been dismissed.

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 16, 2015

Residential Tenancy Branch