# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWEDISH CANADIAN MANOR SOCIETY
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation for loss of quiet enjoyment. 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.

At the outset of the hearing I confirmed service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenant served his Application for Dispute Resolution, including the separate page outlining the "details of dispute", to the landlord via registered mail in September 2017. The tenant's Advocate prepared a written submission and compiled evidence in a package that was sent to the landlord via fax on March 19, 2018. A compact disc (CD) containing digital evidence was also sent to the landlord via registered mail on March 19, 2018. The landlord received the CD on March 21, 2018.

I noted that the evidence contained in the package faxed to the landlord on March 19, 2018 existed well before the tenant had filed his Application for Dispute Resolution and I required the tenant and/or his Advocate to provide the reason(s) for the delay in serving it upon the landlord. The advocate's response was that it was served within the time limit of at least 14 days before the hearing.

I reviewed the obligations to serve evidence at the time of serving the Application for Dispute Resolution (Rules 2.5 and 3.1 of the Rules of Procedure in effect at the time of filing) or as soon as possible (Rule 3.11) but must be received by the other party no later than 14 clear days before the hearing (Rule 3.14) and cautioned the tenant and his Advocate that if there is an unreasonable delay the tenant's evidence may be excluded.

I turned to the landlord's agent who confirmed that he had read the tenant's evidence package that was faxed on March 19, 2018 and was prepared to respond to it even though the landlord's documentation regarding this tenancy had been archived. The landlord confirmed that the landlord would not be unduly prejudiced if the tenant's evidence package that was faced to him on March 19, 2018 was admitted into evidence Accordingly, I admitted the tenant's evidence package into evidence, with the exception of the CD, as explained below.

As for the CD that was sent to the landlord, I determined that it was not received by the landlord at least 14 days before the hearing. As provided in Rule 3.10 a party who serves and intends to rely upon digital evidence must confirm that the other party can see/hear the content on the digital device. The tenant's Advocate had indicated on the Digital Evidence Details worksheet that she had confirmed with the landlord that the landlord could see/hear the digital evidence; however, the Advocate confirmed during the hearing that this was an inaccurate statement. The landlord testified that he did not have the equipment needed to view or hear the content on the CD. Therefore, I excluded the CD from further consideration.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord in the amount claimed from the landlord for loss of quiet enjoyment?

Background and Evidence

The month to month tenancy started on December 28, 2015. The tenant was required to pay subsidized rent in the amount of $326.00 on the first day of every month. The rental unit is an apartment style unit in a multiple unit building operated by the landlord. The tenancy ended at the end of June 2017 as reflected in a previous dispute resolution decision (file number referenced on the cover page of this decision).

The tenant seeks compensation of $1,400.00 from the landlord for loss of quiet enjoyment. This sum is calculated as being approximately 25% of the tenant's monthly rent for 15 months or the entire duration of the tenancy.

The tenant submitted that he was harassed and threatened by the tenant in the adjacent unit (herein referred to as "the neighbour") almost immediately after his tenancy began. The tenant described the neighbor's actions as including: blocking the tenant's way in the common hallway, confronting the tenant in the parking lot, swearing

at the tenant, threats to punch him or cause him physical harm, and wanting to engage the tenant in a fight.

The tenant testified that he complained to the landlord's agents orally, over the phone, in January 2016 about the neighbour's actions and then began emailing or submitting documentation to the landlord starting in January or February 2016. The tenant asserted that despite his complaints, the landlord failed to take sufficient action to protect his right to quiet enjoyment. The tenant also stated that he called the police several times in response to conflicts with the neighbour.

I noted that I had not been provided copies of the tenant's emails or documentation sent to the landlord except for one letter he addressed "to whom it may concern" on April 22, 2017. I also noted that I had not been provided any police reports. The tenant responded by stating the emails and documentation given to the landlord were too numerous to submit as evidence. The tenant also stated that he had 35 pages of police reports he obtained but claimed that they were "useless" because much of the information was redacted.

The tenant's advocate pointed to communication the tenant received from the landlord where the landlord acknowledged conflict between the tenant and the neighbour. The tenant's Advocate also pointed to other letters written by other residents about the neighbour's conduct.

The tenant stated that when he complained to the landlord the landlord's agents would say they would speak to the neighbour and suggested the tenant call the police if he felt threatened. The tenant stated that he also received warning letters from the landlord and the landlord ended up serving him with a 1 Month Notice to End Tenancy for Cause on March 31, 2017 instead of the neighbour.

The landlord acknowledged that the tenant complained about his neighbour but stated the neighbour also complained about the tenant. The landlord stated that upon receiving a complaint from the tenant the landlord's agent would talk to the neighbour and the neighbour would blame the tenant for their conflict and point to the tenant doing things that were harassing to him. The landlord would issue warning letters to both of the tenants. The landlord also acknowledged that the police were called to the property on a number of occasions. The landlord spoke with the police who said they spoke with both the tenant and the neighbour and the police were left with a he said/he said scenario and no arrests or charges were made.

The landlord explained that the landlord did not issue the 1 Month Notice to the tenant because of conflict with the neighbour. Rather, the landlord's reason for issuing a 1 Month Notice to the tenant was the result of the tenant's alleged abusive behaviour toward the landlord's staff persons. The tenant had disputed the 1 Month Notice; however, as seen in the previous dispute resolution decision, no findings were made as to the allegations since the parties mutually agreed to end the tenancy during the hearing.

The tenant also alleged that he was unduly disturbed by the neighbour smoking marijuana. The landlord acknowledged this complaint was received from the tenant and the landlord had no evidence that the neighbour was doing this. Nevertheless, the landlord issued notices for all tenants on that floor to inform tenants that smoking marijuana was not permitted on the property.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

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

In this case, the tenant bears the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenant asserts that he suffered a loss of quiet enjoyment due to the alleged actions of another tenant on the residential property and the landlord's alleged failure to take appropriate action to protect the tenant's right to quiet enjoyment of the property.

Section 28 provides the covenant of quiet enjoyment to a tenant. Section 28 provides as follows:

> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
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> (a) Reasonable privacy;
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> (b) freedom from unreasonable disturbance;
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> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
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> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment* also provides information and policy statements with respect to a tenant's right to quiet enjoyment. The policy guideline provides, in part:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I have no doubt, based on the undisputed testimony and documents that were before me, that the tenant experienced conflicts with another tenant of the residential property. However, in order for the tenant to establish an entitlement to compensation from the landlord for the actions of another tenant the tenant must demonstrate that the landlord knew of the disturbances and failed to take reasonable action.

The tenant stated he had emails, documents and police reports to demonstrate the complaints he lodged against the neighbour to the landlord and the police; yet, the tenant did not provide these documents, except for one addressed “to whom it may concern” on April 22, 2017 in response to receiving the 1 Month Notice from the landlord. I find it reasonable to expect that where a tenant seeks compensation from a landlord for numerous months, as in this case, the tenant would provide the documentation he has available to him so that the Arbitrator may review the dates and nature of complaints that were made to the landlord. As for the tenant’s oral testimony as to the complaints he made to the landlord, I found it lacked details such as dates and specific details.

Despite the tenant’s lack of documentation and specifics, the landlord acknowledged receiving a number of complaints from the tenant about the neighbour. According to the landlord, the landlord investigated the tenant’s complaints by speaking with the neighbour, receiving opposing versions of events, and issued warning letters to both the tenant and the neighbour, including instructions to avoid each other. The warning letter issued to the tenant by the landlord in January 2016 indicates that the neighbour alleged harassment by the tenant by way of the tenant sniffing the neighbour’s door and taking pictures and surveillance of the neighbour. I also heard the landlord followed up with the police after the police attended the property and determined the police were also provided opposing versions of events that resulted in no arrests or charges. As for the complaint of marijuana smoking the landlord issued notices informing tenants that marijuana smoking was prohibited. Considering the above, I find I am satisfied the landlord did not sit idly by and permit the neighbour to harass, threaten or disturb the tenant.

Also of consideration is the amount of time that elapsed without the tenant pursuing other remedies available to him if he was of the position the landlord was failing to protect his right to quiet enjoyment. According to the tenant he suffered loss of quiet enjoyment throughout his entire tenancy, or 1.5 years, due to the landlord’s inaction; yet, the tenant did not file an Application for Dispute Resolution to seek a remedy during his tenancy. Rather, it would appear that the tenant waited until after receiving a Notice to End Tenancy and after the tenancy ended to raise the issue to the attention of an Arbitrator. Accordingly, I find there is a lack of mitigation in this case.

In light of all of the above, I find the tenant failed to prove an entitlement to compensation as claimed against the landlord and I dismiss the tenant’s application.

Conclusion

The tenant's application is 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: April 04, 2018

Residential Tenancy Branch