Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cedar West Apts.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, OLC, MNDCT**

Introduction
This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:
Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62; and
A monetary order for damages or compensation pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided
Can the filing fee be recovered?
Should the landlord be ordered to comply with the Act, Regulations or tenancy agreement?
Is the tenant entitled to compensation?

Background and Evidence
At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. She has been living in the rental unit for the past 5 years. Rent is currently $772.00 per month payable on the first day of the month.

The tenant testified she started having issues with the occupant who lives across the hall from her ("neighbor") about a year ago. The tenant stated that her child, a six-year old, is scared of the neighbor and the sight of her causes the child anxiety because the neighbor once screamed and swore at them. No details of that incident were provided.

On June 4, 2020, the tenant describes an incident whereby the neighbor refused to move out of the doorway to allow her and her son to pass through. In the letter provided to the landlord on June 30th, the tenant states that the neighbor refused to move *"even though I've told her on multiple occasions that my child is scared of her".* The letter continues to state that the neighbor *"continues to try and scare my child with her harassment. She has harassed us at least 6 times in the last year. I do NOT want her approaching us in the hallways or blocking doorways".* No specific examples of the 6 prior incidents were provided.

The tenant testified she sent the letter following a different incident on June 23rd when the neighbour approached her and the child during a fire alarm incident and the tenant tod the neighbour to stay away ant not upset her son. The neighbour was 5 metres away from the tenant at the time.

On August 1st, the tenant sent a second letter to the landlord asking the landlord to *"take steps to fix the problem".* She seeks a response in writing regarding the measures taken by the landlord to ensure the harassment stops. The tenant testified the landlord has done nothing.

The tenant testified that she should be entitled to a 25% reduction in her rent for June through August as the landlord has done nothing to prevent the harassment of her or her child. They are experiencing extreme anxiety and it has affected their daily lives because the landlord is not dealing with the problem. The tenant did not provide details at how she determined 25% would be adequate compensation.

The landlord provided the following testimony. The building houses 54 units and it has been managed by the landlord and his wife for the past 10 year. This is the first instance of "*alleged harassment"* in his experience. Both the tenant and her neighbour live across from one another, close to the rear exit of the building.

The neighbour is a 70 year-old grandmother who has lived in the building the same amount of time as the tenant/applicant. She is "*well liked"* by others in the building and has had no other complaints made about her. He describes her as a "*good tenant*". Until the letter dated June 30th was received, the landlord was unaware of the June 4th incident described by the tenant. Because the tenant referred to a police incident number in the letter, he felt the police would investigate. He didn't investigate the issue after the August 1st letter, once again leaving it to the police to finish their investigation. Once the tenant served him with the Application for Dispute Resolution filed at the Residential Tenancy Branch, he went to the neighbour to determine her version of events from June 4th and June 26th.

The neighbour's statement, signed and dated October 1, 2020 indicates that on June 4th, the neighbour didn't hear the tenant approach the exit. The neighbour held the door open, allowing the tenant and her child to exit however this had to be done because the neighbour couldn't re-enter the building without a key to get back in. The neighbour states the tenant tried to pry her hands off the door on that date. The neighbour was never contacted by the police in regards to any incidences regarding the tenant or her child on June 4th. She doesn't go near the tenant or her child and avoids her as much as possible.

The landlord testified that the neighbour is stressed out and anxious from the tenant's allegations as well. The landlord believes there is no reason to caution the neighbour because there is no reason to do so, based on the tenant's allegations or any other perceived harassment.

Analysis – order for landlord to comply with the Act

The tenant seeks an order that the landlord comply with the Act by providing her with quiet enjoyment. This is elaborated in sections 28 and 62(3) of the Act (reprinted below)

> ***Protection of tenant's right to quiet enjoyment***
>
> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*

(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];
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Director's authority respecting dispute resolution proceedings
(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. The applicant/tenant in this case must be able to prove it's more likely than not that the facts occurred as claimed.

Based on the tenant's testimony, I have no doubt that her child fears or suffers from anxiety from being around the neighbour. While the tenant may feel that sending a warning letter to the neighbour would alleviate the child's anxiety, I do not share the same opinion. The child would still feel discomfort and anxiety around the neighbour with or without a warning letter being sent. Secondly, I find it is unreasonable to have the landlord give the neighbour a letter seeking an end to harassing behaviour when the tenant's only evidence of the behaviour is the tenant's version of events on June 4th and June 23rd.

The tenant describes the interactions between herself and the neighbour as harassment. Turning to the standard of proof, I find it altogether reasonable and more likely than not that the neighbour had to hold the door open for the tenant to ensure she could re-enter the building on June 4th without a key. Although the tenant provided a police incident number, she didn't provide any other corroborative evidence to substantiate her allegation of harassment made to the police. No testimony or evidence regarding the outcome of the investigation or whether the tenant is seeking criminal charges against the neighbour was provided. Relying solely on the tenant's testimony regarding this instance of harassment is insufficient for me to determine she was denied quiet enjoyment of the property, free from unreasonable disturbance.

Further, I am not satisfied the encounter between the parties the night of the fire alarm when both parties used the same building exit constitutes any kind of harassment. The

tenant did not indicate the neighbour approached her menacingly or made any remarks to her that night; she only indicated the neighbour came within 5 metres of her at which time she told the neighbour that her presence frightened her child causing the neighbour to back away.

Given the insufficient evidence before me, I do not find the landlord has denied the tenant any right to quiet enjoyment and I decline to order that the landlord comply with the Act.

Analysis – rent compensation

The tenant seeks monetary compensation as a 25% rent reduction for the landlord's failure to give the neighbour a warning letter.

> *Residential Tenancy Branch Policy Guideline PG-16 [Compensation for Damage or Loss] states:*
> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.* ***It is up to the party who is claiming compensation to provide evidence to establish that compensation is due****. In order to determine whether compensation is due, the arbitrator may determine whether:*
> 1. *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
> 2. *loss or damage has resulted from this non-compliance;*
> 3. *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
> 4. *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Earlier, I found that the landlord did not fail to provide the tenant with quiet enjoyment pursuant to section 28. Without a breach of the Act, there is no damage that the tenant can claim for (points 1 and 2 of the 4-point test, above). Further, the tenant arbitrarily chose to seek a 25% reduction of rent without any specific reason for that figure provided. I find the tenant has therefore failed to provide sufficient evidence to establish the value of her damage or loss (point 3). For these reasons, I dismiss the tenant's claim for monetary compensation without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is final and binding and 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 13, 2020

Residential Tenancy Branch