



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

The tenant applies for an order that the landlord comply with the law and the tenancy agreement and for a monetary award in the nature of a rent rebate on the ground that another tenant in the applicant's housing complex has been unreasonably disturbing her family and the landlord has not taken steps to restore her right to quiet enjoyment.

No representative of the corporate respondent attended for the hearing within 65 minutes after its scheduled start time at 9:30 a.m. on January 12, 2021. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the tenant and this arbitrator were the only ones who had called into this teleconference during that period.

I find the landlord has been served with the application. It has filed a written submission and evidence exhibits in opposition to the claim that it would not have filed had it not been served.

Issue(s) to be Decided

Has the landlord failed to protect the tenant's right to quiet enjoyment and particularly, her right to freedom from unreasonable disturbance, granted by s. 28 of the *Residential Tenancy Act* (the "RTA")?

Background and Evidence

The rental unit is a two bedroom townhouse in a townhouse complex of 45 units. There is a written tenancy agreement. The tenancy started in June 2011. Currently the monthly (BC Housing subsidized) rent the tenant pays is \$1017.00. The landlord holds a \$490.00 security deposit.

The tenant testifies that on or about May 22, 2019, a new tenant, BM, who had moved in across the street called her a "b*tch" and a "sl*t." As well, BM yelled at the tenant's son, 8 years old at the time, that he was an "a**hole" and a "d*ick."

She then submitted a written complaint to the landlord regarding BM's inappropriate behaviour and indicated BM had been screaming and swearing in front of her child and other children.

Following that incident the tenant says the police attended three times in the next two weeks to deal with complaints about BM.

As a result of this incident the tenant says her son developed an aversion to pass near BM's rental unit, even though the child's direct path to school went by it.

In October 2019 BM, in the company of his son and the son's mother, grabbed the tenant's son and yelled at him. The tenant called the police but decided to decline to pursue the matter in order to avoid having her son testify.

The tenant reported the incident to the landlord but was informed that in order to proceed with her complaint the tenant would be required to submit a copy of the police report. The tenant described her diligence in attempting to obtain a copy of the police report. Ultimately, she received a copy five months later and sent it to the landlord.

On or about June 3, 2020, BM was discovered yelling and swearing at the tenant's son, calling him and "a**hole" and "a piece of sh*t." It was her son's friends who told her of the incident. She states that her son is afraid to go into the area around BM's accommodation.

The tenant says that in addition to the direct abuse from BM, he has people over late at night, drunk, in the open carport in front of his accommodation. She did not indicate dates this happened or the frequency it occurred.

She has filed formal complaint forms with the landlord, in the RTB form the Branch provides, concerning: the noise from BM's residence, the "egging" of her vehicle, BM shooting a pellet gun in the neighbourhood, and BM looking into her townhouse through the window.

She says a neighbour K, who lives directly beside BM filed similar complaints at the same time.

On June 22 or 23, 2020, the tenant had correspondence with D, a representative of the landlord. The tenant reiterated her string of complaints and concerns. The tenant says that D told her none of the complaints had been sent on to her. As a result, the tenant resubmitted to D all the written complaints she and K had made, including police reports, videos taken by K showing people at BM's place at all hours, BM shooting his pellet gun, looking inside a house and presenting his middle finger to K's camera.

In her email to the landlord on June 23, the tenant noted that she was hesitant to turn over evidence because she has faced retaliation from BM whenever she has voiced any issues and that she felt she lived in danger.

D told her that if more information came forward "it would be better." She informed the tenant that she'd need at least three different complaints or else one complaint corroborated by a police report in order for the landlord to take action.

The tenant says she told D that her son was afraid and D said she understood.

On June 25 the tenant gave more information to D including a video of people at BM's residence. She said BM had a physical fight with another neighbour outside on the street.

On June 25 D warned the tenant that she was sending BM the evidence and that it clearly showed intimidating behaviour and apologized that it had taken so long to resolve. D said she did not want the tenant to live in this environment and that there would be resolution of it.

ON July 9 D asked the tenant about evidence to prove BM had unlawful occupants in his rental unit. The tenant wrote back saying BM's girlfriend was still living in BM's rental unit, that her son now runs away and is called a "scaredy cat."

The tenant knew the landlord had given the tenant an eviction notice. Later she saw an anonymized version of the arbitration decision rendered as a result of BM's challenge of the Notice. The decision set aside the eviction notice made no mention of the disturbance BM had been causing.

A review of RTB records shows that BM had been served with and successfully applied to cancel a two month Notice to End Tenancy for ceasing to qualify for subsidized housing.

The tenant says BM's conduct has continued. Her most recent formal complaint was made in November 8, after BM called her son a "d*ck" and an "a**hole."

Though the landlord was not present at this hearing, I have taken the liberty of reviewing its filed written submission.

The landlord indicates it has attempted to resolve this matter, describing it as an ongoing dispute between two tenants.

It notes that it received the tenant's June 23, 2020 email regarding an unauthorized occupant in BM's rental unit and BM's harassing, threatening and disturbing behaviour.

The landlord states in the memorandum that its policy is that tenants try to work out their differences and that it will proceed with a warning letter to a tenant if it receives three written complaints from three different tenants regarding the same complaint, "as the Act dictates."

The landlord's memorandum indicates the June 2020 complaint made by the tenant was the first complaint about this type of behaviour brought to the Head Office of the landlord and that BM was sent a written notice noting several complaints from neighbours, along with police reports and other evidence, about harassing and intimidating behaviour and telling BM that any further such behaviour will cause a one month Notice to End Tenancy for cause to be issued to him.

The memorandum indicates that a police report indicated "back and forth animosity" between the tenant and BM and that it is a dispute between the applicant and BM.

It indicates the landlord has offered BM accommodation farther away in the complex but the offer has not been accepted. The landlord does not want to evict anyone during the current Covid pandemic because they would lose their housing.

The memorandum states that the landlord will “act accordingly” on evidence of charges, arrest and/or evidence that supports dangerous and disturbing behaviour, but states that the landlord wishes to “mitigate” the dispute in a more amicable manner and will move the tenants if circumstances allow and the tenants agree.

Analysis

I accept the tenant’s uncontradicted evidence that since May 2019 she, and particularly her young son, have been verbally abused and intimidated by BM. It cannot be determined from the evidence how often this has happened, but I accept her evidence that it has struck fear in her son and has created a consistent anxiety in both of them.

The verbal harassment by BM is an unreasonable disturbance no tenant should be required to countenance.

The evidence of late night disturbances from BM and his guests partying and the use of a pellet gun are much less concrete and I am unable to determine that they were more than an occasional disturbance or annoyance.

I do not accept the landlord’s contention that it is a dispute between two fighting tenants. There is no evidence of BM making any complaint to the landlord about this tenant. Reference in a police report noting a back and forth animosity between an accuser and an accused in front of the investigating officer would only be surprising by its absence. It is not indicative of a mere quarrel or that both sides are somehow at fault.

I accept the tenant’s sworn evidence over the landlord’s written memorandum that the tenant has been complaining to the landlord about BM’s conduct since May 2019 and that the tenant resupplied earlier complaint material to the landlord in June 2020 when D came on the scene. At that time the landlord properly put BM on notice that a further infraction could lead to an eviction notice. There is no evidence of any further complaint about BM between the landlord’s warning letter and the date this application was made: October 21, 2020.

It should be noted that a landlord is not directly responsible for significant disturbance one tenant might cause another. On receiving a complaint from a tenant it is the landlord's obligation to consider the nature of the complaint and to conduct any investigation the circumstances reasonably require. This might involve attending at the scene or being ready to attend in the event of a recurrence of the conduct. It may involve talking other neighbours to corroborate any allegation. In some cases it may simply involve informing the "offending" tenant that some conduct is disturbing others. If the complaint is determined to be credible and serious, then the landlord is obliged to take steps. Again, depending on the circumstances, those steps may be a warning letter or even an immediate eviction notice.

As noted in the landlord's memorandum, if an eviction notice is issued and it is challenged then the landlord is obliged to prove the alleged grounds at a hearing. However, often that is as simple as putting the complaining tenant(s) and any other material witnesses forward with their evidence and letting an arbitrator make the decision.

There is no requirement in *RTA* that there be three complaints needed to spur a landlord into action, nor is there a requirement for a police report. As stated in this tenant's evidence, it took her five months to obtain such a report and she was the complainant; much too late for a landlord take any proper, timely action.

In its first iteration, the *RTA* required that to evict a tenant his or her conduct had to unreasonably disturb the enjoyment of other "occupants" in the residential property (R.S.B.C. 1996, c. 406, s. 36). That requirement was soon changed to require that only a single "occupant" be shown to have been unreasonably disturbed and that is how the current legislation reads. Requiring three complaints would appear to be contrary to the *RTA*. Thought it may be convenient for a landlord to rely on such a policy, it does so at its peril.

There is no basis to forego maintaining a tenant's right not to be unreasonably disturbed because there is currently viral pandemic. The Residential Tenancy Branch in conjunction with the provincial government has relaxed certain rules about rent payment and rent related evictions in the face of the pandemic, but no change has been made to a tenant's right to quiet enjoyment of her rental unit or to s. 47(1)(d) of the *RTA* authorizing the eviction of a tenant if he has unreasonably disturbed another occupant.

In this case I find that the landlord gave no attention to the tenant's complaints starting in late May 2019 and only turned its attention to her situation in late June 2020. It would

appear that the landlord's warning letter of July 7 to BM had its effect, at least until the date of this application October 21, 2020. There were no more complaints about BM.

The landlord's failure to act in a timely manner caused a period of 13 months to pass, during which time the tenant and her son bore the ever present threat and worry of being verbally abused by BM when outside their home. The tenant is entitled to compensation for diminution in the amenity of the rental unit and residential property.

I consider that a 10% loss of amenity for that period is appropriate in the circumstances of this case and I award the tenant \$1322.00.

Conclusion

The tenant will have a monetary award of \$1322.00 plus recovery of the \$100.00 filing fee. I grant her a monetary order against the landlord for the total of \$1422.00. She is entitled to offset that amount against future rent as it comes due.

A compliance order is not warranted in the circumstances.

It should be noted that the tenant BM was not a party to this proceeding. He was not given an opportunity to present evidence in his favour or to challenge the applicant tenant's claims. My findings therefore relate only to the dispute between the applicant tenant and the landlord. BM is entitled to present contrary evidence in any future proceeding and is not bound by the findings made here as they relate to his conduct.

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: January 12, 2021

Residential Tenancy Branch