

DECISION

Dispute Codes OPR FF O
 MNDC OLC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord filed to obtain an Order of Possession and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed to obtain a Monetary Order for money owed or compensation for damage or loss under the *Act*, for an Order to have the Landlord comply with the *Act*, and to recover the cost of the filing fee from the Tenant for this application.

Service of the amended hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on August 25, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on August 30, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord did not appear despite filing a cross application for dispute resolution and despite being served with notice of the Tenant's application in accordance of the *Act*.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order under sections 55 and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to Orders under sections 62, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on May 1, 2009 and ended on September 1, 2009 with the monthly rent payable on the first of each month in the amount of \$550.00. The Tenant paid a security deposit of \$275.00 on approximately April 25, 2009. The Landlord returned the Tenant's security deposit of \$275.00 on September 1, 2009.

Landlord's Application - The Landlord was not in attendance to present the merits of his application.

Tenant's Application - The Tenant testified that his rental unit was on the main floor of the home and that there was a rental unit above him and another one in the attached suite next door. The Tenant argued that he did not have any issues with his rental unit or neighbours until the new tenants occupied the rental unit above him on July 1, 2009. The Tenant testified that the new upper tenants had a young child who was allowed to make excessive noise which consisted of banging and pounding onto the floor. The Tenant argued that he spoke to the upstairs tenants about the continuous noise but that he was told their child liked to drum and child's parents would be allowing the child to continue.

The Tenant argued that the noise was very loud and continued intermittently between 9:00 am and 9:30 p.m. The Tenant argued that initially the noise was constant so as time went on it began to take a lesser amount of noise to aggravate him. The Tenant stated that when his conversations with the upper tenants failed to come to a resolution, the Tenant contacted the Landlord on approximately July 7, 2009 and requested that the Landlord speak to the upper tenants to request that they be considerate of the other tenants and prevent their child from banging on the floor. The Tenant argued that the Landlord's response was that it was the Tenant's problem and not the Landlord's. The Tenant stated that the Landlord started to screen his calls by not answering when the

Tenant called so the Tenant would approach the Landlord if he seen him at the rental unit.

The Tenant testified that on July 11, 2009 the Landlord served the Tenant in person at the rental unit with a hand written notice to end tenancy which states that the Landlord will be moving into the rental unit. The Tenant argued that on July 15, 2009, when the Landlord attended the rental unit to fix an electrical problem, the Tenant told the Landlord that the notice to end tenancy was invalid. The Tenant testified that the Landlord did not reply to him and simply walked to the Landlord's car and started to complete a second notice to end tenancy.

The Tenant referred to his documentary evidence and pointed out that the second notice he received from the Landlord was also invalid because the Landlord had purposely altered the form by blanking out information on the form such as "When the tenant will be assumed to have received this notice" and "Information for tenants who receive this notice to end tenancy" and so on.

The Tenant testified that the Landlord issued him a third notice to end tenancy on July 23, 2009 and that the Tenant found this notice in an envelope left on his step shortly after July 23, 2009.

The Tenant testified that when the Landlord failed to act on the Tenant's complaints the Tenant contacted the RCMP on August 13, 2009 and that the Police finally attended the rental unit and spoke to the upper tenants. The Tenant stated that the police told him that they asked the upper tenants to keep the noise down however the police could not do anything further as the tenants were not breaking the law.

The Tenant argued that he also contacted the by-law office and was told that the upper tenants were not breaking a by-law and that the by-law officer could not assist the Tenant. The Tenant stated that he had tried everything to resolve the matter but that no one was willing to assist him. The Tenant argued that he moved into this rental unit with the intention of staying long term and has since had to relocate to a rental unit which is

costing him \$610.00 per month rent; he now has to pay utilities and for doing laundry, items which were previously included in his rent of \$550.00 per month.

The Tenant is claiming \$5,000.00 damages and to recover the cost of the filing fee of \$50.00.

Analysis

Landlord's Application - Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. In the absence of the Applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Landlord called into the hearing during this time. Based on the aforementioned I find that the Landlord has failed to present the merits of his application and the application is dismissed, without leave to reapply.

Tenant's Application - I find that in order to justify payment of damages under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Tenant pursuant to section 7. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by his evidence. I find that by failing to manage the complaints by the Tenant, the Landlord has failed to provide the Tenant with quiet enjoyment, as required under section 28 of the *Act*, and as a result the Tenant has suffered a devaluation of his tenancy from July 1, 2009 to September 1, 2009. The Tenant has also suffered additional losses with moving costs, rent which is \$60.00 higher per month, plus costs for electricity and laundry.

Based on the above I find that the Tenant has proven his claim for loss in the amount of \$3,500.00 which consists of \$1,100.00 rent abatement for July and August the two months the Tenant suffered a loss of quiet enjoyment, \$720.00 in higher rent charges for one year, \$550.00 compensation of one months rent for issuance of the notice to end tenancy for Landlord's use of property, under section 51 of the *Act*, \$130.00 towards utilities and laundry fees that are now incurred by the Tenant, and \$1,000.00 in aggravated damages.

The Tenant has primarily been successful in his claim and I find that he is entitled to recover the cost of the filing fee from the Landlord for this application.

I note that the Landlord verges on harassment of the Tenant by issuing the Tenant three notices to end Tenancy. I also caution the Landlord that he could be liable for Administrative Penalties under the *Act* if he continues to issue invalid notices whereby he alters, blocks or removes information from *Residential Tenancy Branch* issued documents or forms.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his rights and responsibilities as set forth under the *Residential Tenancy Act*.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Award for damages and loss as listed above	\$3,500.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$3,550.00

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$3,550.00. The order must be

served on the Landlord and is enforceable through the Provincial Court as an order of that Court.

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: September 08, 2009.

Dispute Resolution Officer