

Decision

Dispute Codes: OPR, CNR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with 2 applications: 1) from the landlords for an order of possession, a monetary order for unpaid rent, retention of the security deposit, and recovery of the filing fee; 2) from the tenants for cancellation of the landlord's notice to end tenancy for unpaid rent, and a monetary order as compensation for damage or loss under the Act / regulation / tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the original term of tenancy was from February 1, 2008 to February 1, 2009. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$900.00 is payable in advance on the first day of each month, and a security deposit of \$450.00 was collected on January 15, 2008.

Arising from rent which had not been paid in full for the months of August, September and October 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated October 30, 2009. The notice was served by posting on the tenants' door on that same date. Subsequently, the tenants have made no further payments toward rent and they continue to reside in the unit. The failure of the tenants to pay rent in full arises in part from loss of employment.

The tenants take the position that they are entitled to compensation on the basis that their right to quiet enjoyment has been breached. The tenants reside in one of three units of a triplex. The landlord also rents out a house next door. The application alleging breach of the right to quiet enjoyment arises mainly out of the tenants' concerns about the conduct of other tenants and / or persons allowed on the property by them during the 5 month period from July to November 2009. The details of the tenants' allegations need not be reproduced here. In summary they include, but are not limited to, the absence of a proper fence preventing "trespass" by other tenants and their visitors across the tenants' yard by way of foot and dirtbike, parking of vehicles by others in space assigned for the tenants' use, unsafe use of a power extension cord, excessively long time for completion of work on the roof during which time construction / roofing "materials and equipment littered the property," excessive noise from music and power tools, revving of vehicle engines, Halloween fireworks, all of the foregoing during late evening / early morning hours, in addition to visits to the unit by the landlord without proper notice, and so on.

Evidence submitted by the tenants includes a letter to the landlord dated July 16, 2009. In their letter the tenants set out some of their concerns and specifically describe "people dealing drugs at the foot of our porch," and others "making use of our yard for socializing and cutting through to visit the people who live in the middle unit." The tenants proceed in their letter to note:

Since you refuse to return repeated phone calls regarding these issues we have no choice but to inform you in writing.

We would like to set up a time that is convenient for both you and us and we would prefer to meet you off the rental property. We feel our personal security and property is at risk here and do not wish to have your extended presence in our unit noted by others.

Subsequently, the tenants met with the landlord on July 30, 2009. This meeting led to an agreement whereby the landlord waived June's rent. Following this, the tenants paid rent in full for July, and made payment of \$600.00 towards rent due for August.

As compensation for the alleged breaches of the right to quiet enjoyment, some of which are set out above, in their application the tenants seek reimbursement of July's full rent in the amount of \$900.00, reimbursement of the \$600.00 paid towards rent for August, and waiving of rent for September and October 2009. Further, the tenants seek to recover "moving expenses."

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

Section 63 of the Act provides that the parties may undertake to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the tenants will vacate the unit effective not later than 1:00 p.m., December 31, 2009, and that an order of possession will be issued in favour of the landlord to that effect.

As for the monetary order, I find that the landlords have established a claim of \$3,000.00. This is comprised of \$300.00 in unpaid rent for August 2009, and \$2,700.00 in unpaid rent combined for the 3 months of September, October and November 2009 (3 x \$900.00). I order that the landlords retain the security deposit of \$450.00 plus interest of \$6.49 (total: \$456.49) and apply it against the above claim. This results in a claim by the landlords in the amount of \$2,543.91 (\$3,000.00 - \$456.49).

In relation to the tenants' application, section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides as follows:

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.

As earlier noted, the tenants brought their concerns to the attention of the landlord in writing. This led to a meeting and partial resolution in the form of the landlord's decision to waive all of June's rent. While the landlord claims she has spoken with other renters about some of the concerns raised by the tenants (a dog running wild, for example), there is no evidence that the landlord undertook to address with other renters in writing, the allegations related to their allegedly disturbing conduct. Further, on occasions when police attended the triplex, it appears it was the result of calls made by the tenants.

Residential Tenancy Policy Guideline # 6 addresses **Right to Quiet Enjoyment**, and provides in part, as follows:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

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. Such interference might include serious examples of [among other things]:

- unreasonable and ongoing noise
- persecution and intimidation

- **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects

the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

On application, an arbitrator may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

The full text of the legislation, the Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

As for the claim advanced by the tenants, I find there were periodic breaches to the right to quiet enjoyment over a period of months from August through to mid November 2009. I find the nature of breaches to be varied, and I note they do not occur on a daily basis and that some have been more disturbing to the tenants than others. In the result, I find that they have established entitlement as follows:

August: \$232.50 (\$7.50 x 31 days)

September: \$225.00 (\$7.50 x 30 days)

October: \$232.50 (\$7.50 x 31 days)

November 1-15: \$112.50 (\$7.50 x 15)

Total claim: \$802.50

I dismiss the tenants' application for compensation related to rent for July, as agreement around adjustments in rent had been reached between the parties during their meeting on July 30, 2009.

As the order of possession arises out of the tenants' failure to pay rent, in addition to the fact that they have not presently moved, I dismiss their claim for moving expenses.

Offsetting the respective claims, I find that the landlord has established a net entitlement of \$1,741.41 (\$2,543.91 - \$802.50).

As both parties have met with some success in their applications, I hereby also grant the landlord recovery of one half the \$50.00 filing fee in the amount of \$25.00. The landlord's total entitlement is therefore \$1,766.41 (\$1,741.41 + \$25.00). The tenants' filing fee was waived.

I make no finding in regard to December's rent, as that matter is not directly before me.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., December 31, 2009**. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,766.41**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 30, 2009

Dispute Resolution Officer