



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting compensation for damage or loss under the Act; an Order the landlord comply with the Act; that the tenant be allowed to reduce her rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$1,113.00 for loss of quiet enjoyment?

Must the landlord be Ordered to comply with the Act?

Is the tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to filing fee costs?

Background and Evidence

This fixed-term tenancy commenced on January 1, 2011; it was to end on December 31, 2011. Rent was \$1,113.00 per month, due on the first of each month. A deposit in the sum of \$525.00 was paid at the start of the tenancy.

Evidence submissions indicated that on May 30, 2011, the landlord released the tenant from the lease. On June 7, 2011, an email was sent to the tenant arranging the details of a condition inspection report. The tenant vacated the unit on June 15, 2011.

The tenant lived in 1 of 2 units above a commercial space owned by the same individual.

The tenant testified that commencing April 2, 2011, renovations began to the landlord's commercial space below her unit. The contractor was building a yoga studio for his spouse and they wanted to complete the work by June 1, 2011. The construction occurred constantly, during the day, in the evenings and on weekends. Evidence before me indicated that the tenant was sending the property management company emails requesting consideration. The tenant first emailed the landlord on April 6, 2011 and repeatedly called the landlord, seeking some sort of remedy.

The tenant stated she was away from her unit 8 to 10 hours each day. Her 19 year old son was an occupant of the unit and he was also being disturbed; unable to sleep after work. At times the sounds were so disruptive the tenant and her son would abandon the unit. On May 29, 2011, a Sunday, the tenant called the police as the construction commenced at 6 a.m. The police told the landlord, who lived across the road, that the work must cease.

Initially the landlord did not offer the tenant any solution to the problem and warned her that if she gave notice to end her fixed-term tenancy she would have to pay liquidated damages and loss of rent revenue. The tenant stated there would most definitely have been loss of rent revenue as no one else would rent the space, given the constant noise.

On May 30, 2011, the contractor verbally assaulted the tenant, by yelling in her car window; the tenant found this distressing. By May 30, 2011, the property owner agreed to allow the tenant to end the tenancy without expense to the tenant; an email was sent

on that date by the property manager informing the tenant she could leave. The tenant vacated on June 15, 2011.

During the hearing the landlord acknowledged the tenant's submissions and stated they understood that the disturbances caused by the 2 months of construction had resulted in a loss of quiet enjoyment to the tenant.

The tenant stated that the serious disturbances ceased on June 6, 2011; although some construction continued.

Analysis

I find, pursuant to section 44 of the Act, that the tenancy ended on June 15, 2011, when the tenant vacated the rental unit.

I find that the tenancy ended as part of a mutual agreement, as indicated in the email sent to the tenant by the landlord on May 30, 2011. I find that this email confirms that the tenant's complaints were valid and that the landlord had failed to accept any responsibility for her loss of quiet enjoyment from April 6, 2011; the date the tenant first complained, until June 15, 2011, when the tenancy ended.

I find that the property owner had direct control over the construction that was taking place in the lower level of the building where the rental unit was situated and he chose to ignore the pleas of the tenant for some consideration and protection of her right to quiet enjoyment. This was not a situation where the landlord had no control over the loss of quiet enjoyment.

Therefore, I find that the tenant is entitled to compensation for damage and loss of quiet enjoyment in the sum of \$1,113.00, equivalent to the loss of value of her rental unit between April 6, 2011 and June 15, 2011.

I find that the tenant's application has merit, and that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

There is no evidence before me of a service, repair or facility was denied to the tenant; that portion of the claim is dismissed.

No Order to comply with the Act is required as the tenancy has ended.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,163.00, which is comprised of \$1,113.00 in compensation for damage and loss and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,163.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced 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: June 21, 2011.

Residential Tenancy Branch