



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for a monetary order for money owed or compensation for damage or loss and to recover the filing fee.

The tenant and her witness and the landlord appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

The parties each acknowledged receipt of the other's evidence, though some evidence was submitted less than five business days prior to the hearing. The parties were asked if an adjournment was requested due to the late submissions, to which each said no.

I therefore accepted all evidence and the hearing proceeded.

Issue(s) to be Decided

Has the tenant established an entitlement to a monetary order for loss of her quiet enjoyment and to recover the filing fee?

Background and Evidence

This month to month tenancy began on August 1, 2008, ended on September 3, 2011, and monthly rent at the end of the tenancy was \$1,135.00.

The rental unit is one of 5 in a multiple unit residential property, with the tenant formerly occupying one of three units on the upper floor.

The tenant's monetary claim is in the amount of \$600.00, which consists of an alleged lack of quiet enjoyment and loss of privacy for three months during the tenancy stemming from a construction project.

The tenant's relevant evidence included a letter of complaint to the landlord, dated June 1, 2011, a series of letters to the landlord, a memorandum of understanding to the landlord, witness statements, and written demands from the landlord regarding pre-payment of rent cheques.

In support of her application, the tenant testified that during the last year of her tenancy, the landlord began a complete renovation of the unit directly below her, which started approximately on March 1 and ended on May 31, 2011.

The tenant testified that during the entire course of the three month construction project, she was continually interrupted by the noise of the workers and the construction sounds. The tenant further submitted that the workers were around, creating disturbances, such as with drinking and loud talking, even when no construction was taking place. The tenant submitted that her quiet enjoyment was also breached on weekends.

The tenant submitted that the persistent loud talking and laughing was loud enough to wake a person from a deep sleep, and was beyond normal levels.

The tenant submitted that during the course of the construction, she had unannounced visits and invasions of her home when she was not present.

The tenant submitted that the construction project took longer than necessary due to the long periods of lack of work, even though the workers were in attendance, creating a noise disturbance.

The tenant stated that she tried to be patient, but when the construction work lasted much longer than it should, she spoke to the landlord, with no results. The tenant reduced her complaints to writing in a letter to the landlord, dated June 1, 2011. The tenant stated she had no response from the landlord.

The tenant's witness, her sister and another occupant of an adjacent unit in the residential property, testified that there was a lot of noise disruptions during the course of the 3 month construction project.

The witness submitted that there were power disruptions on a number of occasions, which the tenants were never informed of in advance.

The witness verified that there was a lot of unnecessary chatter noise and that the landlord refused to talk to them about the length of the construction or the tenant's concerns.

In response the landlord submitted that the renovation project was necessary in the lower rental unit due to another tenant, who vacated, being a hoarder and destroying that rental unit. The landlord submitted that the vacating tenant cause a rodent infestation.

The landlord admitted that there was a one time drinking incident on the construction project, but that he corrected the problem upon learning of it.

The landlord denied work was taking place on the weekend; instead he would attend the lower rental unit and clean from the previous week's work.

The landlord did not believe anyone had entered the tenant's rental unit without prior notice, as he was the only one, other than the tenant, with a key to the rental unit, and he did not give it to the workers. However, the landlord stated he could neither confirm nor deny the tenant's statements that she returned home one day to find her cats locked away in a bedroom.

As to the power disruptions, the landlord testified that the power company disrupted the power when they worked, and he had no notice or control over their activities.

The landlord admitted that he can be abrupt and that he did not address the issues listed in the tenant's June 1, 2011, letter.

Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance and interference.

On a balance of probabilities, I find the tenant has established that the landlord has interfered with the tenant's right to quiet enjoyment by frequent, ongoing construction noise.

In reaching this conclusion, while I do not question the landlord's need to renovate the lower rental unit, I have no reason to conclude that another occupant's destruction of an adjoining rental unit should impact the tenant's right to quiet enjoyment.

I was further influenced by the tenant's witness' confirmation of the loud noise during construction period and the landlord's statement that he could not confirm or deny entry by others in the rental unit caused me to give the tenant's evidence further credibility.

I was further influenced by the landlord's admission that he failed to address the tenant's complaints and refusal to discuss the progress of the construction. As well, I find the tenant's statements that the work occurred over the weekend were confirmed by the landlord's statements that he attended the rental unit to clean, further leading to a loss in quiet enjoyment during traditional non-construction periods.

I was also particularly influenced by the landlord's written communication to the tenant, in which he made repeated curt demands to the tenant for rent payments, well in advance of the payment being due. One of the written demands mentioned that he has made repeated phone calls and knocked on her door. I find this in direct violation of the tenant's right to exclusive possession and right to be free from unreasonable disturbance.

I find the Landlord's frequent and ongoing contravention of the Residential Tenancy Act in dealing with the tenant has caused the tenant to have suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period of time, from March 1, through May 31, 2011. As a result, I find the tenant is entitled to compensation for that loss.

Residential Tenancy Policy Guideline 6 states: "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.”

I note that the loss of quiet enjoyment was from the landlord's frequent and ongoing interference with repeated requests for pre-paid rent cheques, when the same were not due under the Act or the tenancy agreement, and from the ongoing construction noise.

I therefore allow the tenant's application for **\$200.00 per month** for the devaluation of the tenancy for the months of March **2011 through May 2011** and **\$50.00** for the return of the filing fee for the Application of \$50.00. As a result, I find the tenant has established a total monetary claim of **\$650.00**.

Conclusion

Pursuant to Section 67 of the Act, I have provided the tenant with a monetary order for \$650.00.

I am enclosing a monetary order for \$650.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: November 21, 2011.

Residential Tenancy Branch