



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was scheduled in response to the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from October 1, 2011 to September 30, 2012. Thereafter, the agreement provides that the tenancy will continue on a month-to-month basis. Monthly rent of \$965.00 is payable in advance on the first day of each month, and a security deposit of \$482.50 was collected. While a copy is not in evidence, the parties agree that a move-in condition inspection report was completed.

From the start of this tenancy, complaint-related e-mail and in-person contact began between the tenants and the landlord's agents and, later, between "AN," another renter in the building, and the landlord's agents. These communications were associated with complaints from "AN" about miscellaneous activities in the tenants' unit which he considered were unduly and inappropriately noisy, and complaints from the tenants about the miscellaneous "disturbing behaviour" of "AN." The tenants and "AN" did not communicate directly with each other by e-mail, and "AN's" initial contact with the tenants began when he appeared at their front door early in the tenancy to complain about noise. The building within which the unit is located is a wood frame structure, and "AN" resides in the unit immediately below the tenants' unit.

Ultimately, by e-mail to the landlord dated February 6, 2012, the tenants requested that the landlord consent to early termination of their fixed term tenancy. Subsequently, by e-mail to the landlord dated February 7, 2012 the tenants proposed discussions related to determining a date for ending the tenancy which would accommodate the landlord's need to find new renters. Further, in this e-mail the tenants alleged that the landlord was aware of previous tenants in their unit whose reasons for vacating were related to conduct and behaviour of "AN" which were similar to what they had experienced.

After receiving no response from the landlord, by way of e-mail dated February 20, 2012 the tenants gave notice to the landlord of their intent to vacate the unit effective April 1, 2012. The tenants later informed the landlord of their forwarding address by e-mail dated March 2, 2012. The tenants vacated the unit on March 24, 2012 and a move-out condition inspection report was completed on March 29, 2012. The landlord's agent testified that there are presently no new renters in the unit.

In summary, the tenants consider that there has been a breach of their right to quiet enjoyment by way of "AN's" conduct, in combination with the landlord's alleged failure to take appropriate steps to address their concerns. The landlord takes the position that the tenants contributed to the dispute with "AN" by creating noise disturbances; the landlord's agent also testified as to the existence of concerns about the tenants by other residents, not just "AN," none of which are apparently documented. Further, the landlord's agent testified to the absence of any documented record of disputes between "AN" and previous residents of the tenants' unit.

Compensation of \$3,326.95 sought by the tenants variously includes, but is not limited to, reduction by half of rent for each of 5 of the 6 months of tenancy, costs associated with moving into the unit, costs associated with moving out of the unit, and costs incurred for miscellaneous painting and decorating in the unit.

During the hearing the parties exchanged proposals for potentially resolving the dispute, however, these discussions did not lead to a settlement.

Analysis

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

Section 28 of the Act speaks to the **Protection of tenant's right to quiet enjoyment**, and provides:

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.

Residential Tenancy Policy Guideline #6 addresses "Right to Quiet Enjoyment" and provides in part:

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of the problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

The Supreme Court has decided that dispute resolution officers 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. A

dispute resolution officer can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

A breach of the covenant of quiet enjoyment has been found by the courts to be a breach of a material term of the tenancy agreement. A tenant may elect to treat the tenancy agreement as ended, however the tenant must first notify the landlord in writing. The standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises. An award for damages may be more appropriate, depending on the circumstances.

Based on the documentary evidence and testimony of the parties, I find that the landlord was a reluctant participant in the on-going dispute between the tenants and “AN.” I am also persuaded that the landlord was uncertain how best to address the complaints being made by the tenants about “AN,” and by “AN” himself against the tenants. It appears that the landlord hoped things would settle down over time, and that the parties would make whatever adjustments were necessary for living in close proximity with each other and continuing with their respective tenancies.

Interactions between the parties were principally by way of e-mail. In an e-mail from the landlord’s agent to the tenants dated January 18, 2012, the landlord’s agent stated in part:

We have addressed your concerns verbally on several occasions with [“AN”] and will follow up with a letter to him, not you.

His actions, while no doubt annoying and ones we disapprove of, do not meet the threshold for successfully evicting him, but if there is not an improvement in his behavior we will attempt to evict (he has the legal right to appeal that, though).

Thereafter, by e-mail dated January 27, 2012, the landlord’s agent informed “AN” in part:

....we did receive some other information that collaborated your accounts, so with this we will be able to take a harder line with the Tenants above. They will be receiving a letter outlining what is acceptable with respect to noise and what is not. If they cannot or will not abide by these common sense rules, we will ask them to vacate.

Also, while the situation is frustrating, I would advise you not to confront the neighbours or do things such as hit on the ceiling of your apartment in response to their noise. Doing such things will only provide them with something to use

against you and/or the Landlord should we need to initiate eviction proceedings against them or if the police get involved.

Thank you for your patience and understanding. We will do our best to resolve this issue satisfactorily.

In summary, I find that the landlord failed to address the tenants' recurring complaints in a formal, timely and consistent manner with "AN." Rather, complaints were managed informally on an *ad hoc* basis by way of oral conversations and e-mail. There is no evidence that the landlord was mindful of, and implemented a planned, methodical approach to responding to the tenants' complaints. On a balance of probabilities, therefore, I find that the tenants have established that there was a breach of their right to quiet enjoyment.

As for the monetary order, I find that the tenants have established a total entitlement in the amount of \$1,015.10. This is calculated on the basis of 5 days of rent for each of the 6 months of tenancy, in addition to the \$50.00 filing fee, as follows:

$\$965.00$ (monthly rent) \div 30 (average # days per month) = $\$32.17$ (daily rent)

$\$32.17$ (daily rent) \times 5 (# days awarded per month) = $\$160.85$ (1 month's award)

$\$160.85$ (1 month's award) \times 6 (# months of tenancy) = $\$965.10$ (compensation)

$\$965.10$ (compensation) + $\$50.00$ (filing fee) = $\$1,015.10$ (total entitlement).

In the absence of sufficient evidence to prove entitlement to other particular aspects of the tenants' application for compensation, they are hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of **\$1,015.10**. Should it be necessary, this order may be served on the landlord, filed in the 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: April 12, 2012.

Residential Tenancy Branch