



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP, PSF, LRE, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a Notice to End Tenancy for landlords use of the rental unit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlords to comply with the *Act*, regulations or tenancy agreement; for the landlords to make repairs to the unit site or property; for the landlords to provide services or facilities required by law; to suspend or set conditions on the landlords right to enter the rental unit; and to recover the filing fee from the landlords for the cost of this application.

At the outset of the hearing the tenants withdrew all sections of their application with the exception of a Monetary Order for money owed or compensation for damage or loss and to recover their filing fee.

One of the tenants and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on August 01, 2011. Rent for this unit is \$2,900.00 per month and is due on the 1st day of each month. This is a fixed term tenancy which is due to expire on July 22, 2013.

The tenants testify that although the Two Month Notice to End Tenancy is invalid because this is a fixed term tenancy until July, 2013 they have accepted the notice and expect the equivalent of One month's rent to be paid in compensation for this Notice. The tenants therefore seek compensation of \$2,900.00.

The tenants seek a further sum of \$2,100.00 in compensation for harassment by the female landlord. The tenant testifies that they moved to this property due to the privacy it offered. The tenant states there is a guest house on the property which is not included in their tenancy agreement but the agreement states the guest house will be used occasionally. The female landlord moved into the guest house with her children on July 10, 2012 and in doing so has disturbed the tenants' privacy and quiet enjoyment of their property.

The tenant testifies that the landlord has been abusive towards the tenants and the tenants' children and the landlords' son has deliberately ridden his motorbike on the property to disturb the tenants. The tenant testifies that the patio of the cabin overlooks their patio and the cabin is only 20 feet away from a fire pit the tenants have enjoyed in the evenings. The tenant states that the proximity of the landlord has now compromised the tenants' privacy.

The tenant testifies that there was an occasion when the landlord had called the police and the police came to the tenants' home and woke them up at 2.00 a.m. The tenant

testifies that the landlord had told lies about the tenants turning off the water. The tenant testifies that they are now terrified of the landlord and fear that the female landlord is unstable due to a brain injury the landlord suffered last year. There has been a constant stream of insults and negative behaviour towards the tenants. The tenant states as the landlord has keys to their property they are fearful the landlord will enter the property and the tenants children will not sleep alone due to this.

The tenant testifies that they went away for a weekend and the female landlord has posted a picture of the tenants' home showing an open window on Facebook. The tenant has provided a copy of this picture and the landlords comments stating "cloudy skies and wet weather is the forecast. I wonder why the tenants would leave the window wide open". Two of the landlords Facebook friends have left comments on this and stated "because he doesn't give a crap" and "to piss you off". The tenant has also provided a copy of a Facebook page from the landlord showing a daily quote that states "don't let negative and toxic people rent space in your head. Raise the rent and kick them out." The tenant testifies that these comments posted on a social network site are inflammatory and have humiliated the tenants in a public way.

The tenant testifies that there have been items that have required repair in the property. The dishwasher has not worked for a year, the toilet in the downstairs bathroom continually runs after flushing, the sprinkler system has not operated fully for the summer, the garbrator has not been working for a few weeks, there was a problem with the garage doors which have now been repaired and the air conditioner has never worked. There was also a problem with the indoor pool which the landlords took six months to rectify and the fan in the bathroom is perpetually on and makes a loud noise.

The tenant testifies that he has been notifying the landlords of each problem when it arises as far back as May, 2012. The tenant states they either do not get a response or they just get platitudes saying the landlords will repair things but then never do. The tenant testifies that they are also now paying for the electricity to the guest house while

the landlord is living there. The tenant states he contacted BC Hydro and was informed that there is only one power line for the whole property.

The landlord (CW) testifies that she has a separate meter for the guest house which shows how much power they use and this can be deducted from the tenants' bill by calculating the difference.

CW testifies that the tenancy lease states that the guest house and barn are for the landlords use and have nothing to do with the tenants' rental of the property. CW states the guest house had been rented out for a period when the tenants first moved in and the landlord notified the tenants that the guest house would be used for the landlords' son graduation and for CW's birthday. CW testifies that she did not know that she would be staying in the guest house for an extended period as she did not know that her husband QW and she would be separating. CW states that she needs to live in the property to prepare the house for sale so the landlords' assets can be divided on their divorce. CW states that this is why the tenants were given a Two Month Notice to End Tenancy.

CW testifies that they have not disturbed the tenants and the guest house is 100 yards away from the main house. CW testifies that the day they were moving into the guest house the tenants had padlocked the gate to prevent them access. The landlords' son had to go to a neighbour to get cutters to remove the lock so they could access the guest house. CW testifies that her son did not deliberately ride his motorbike on the property to disturb the tenants; her son was simply removing his motor bike from the property and drove it down the driveway to a friend's house in readiness for when the property is sold. CW denies that they have been abusive towards the tenants or their children and it was the male tenant who has made derogatory remarks towards the landlord. CW testifies that on one occasion the tenant JN told CW that he was going to make her life a living hell and take her for every penny she has. CW testifies that the tenant JN has also threatened her husband, sent e-mails to his workplace and threatened to get on a plane to Ontario and go to see her husband.

CW testifies that when she sent the tenants an e-mail giving them notice in July, 2012 that she would be coming into the house, the tenant JN said to not even think about coming into the house or he would have her physically removed. CW testifies that the tenant has caused upset and on July 10, 2012 when the police had to be called the tenants wife came and apologised for the tenant's behaviour.

QW testifies that the tenants have continually asked the landlords for advice on minor issues and testifies that the tenant informed the landlords that he was going to disconnect the garbrator so the tenants' children would not put their hands in it. QW advised against the tenant disconnecting this appliance. QW testifies that the air conditioner has always worked in the main house.

QW states that they regret the way things have turned out but there is now a lot of emotion and tension between his wife and the tenants. QW testifies that it was understood from the beginning of the tenancy that the guest house was not included in the lease and explicitly states that the landlord is able to stay in the guest house. If the tenants had a problem with this term of the lease the tenants should have pointed it out before signing the lease.

QW disputes the tenant's statement that they are terrified of the other landlord CW. QW testifies that his wife is a 150lb woman while the tenant is much larger. QW testifies that the guest house is located in such a way as to offer privacy from the main house. The patio was also designed to offer privacy between the houses. QW states that the guest house has a meter that can be read by BC Hydro and then they can determine the amount of Hydro used in the guest house.

QW testifies that the tenants have sent many e-mails regarding repairs at the property. The landlords replaced the pool equipment and repaired the garage door in a timely manner. QW testifies that he attempted to contact a sprinkler company in the area many times and eventually asked the tenant to try to contact someone as the landlord lives

out of Provence. QW testifies he also asked the tenant to get someone in to repair the dishwasher and the landlords would reimburse the tenants costs. QW testifies that the fan in the bathroom is linked to the humidistat and kicks in to evacuate air from the house.

QW testifies that the tenant JN has harassed the landlord at his place of work and has e-mailed the landlords employer. QW states he works for a government body and this has undermined QW credibility at work and has deeply embarrassed QW and upset him. The tenant JN has used bullying tactics and this show the two parties cannot successfully cohabite on this property. QW disputes the tenants' claims that they selected this property for the privacy it afforded them as they agreed to accept the presence of the landlord and their guests in the guest house.

The tenant testifies that he did not deny the landlord access to the house he just pointed out to the landlord that she must adhere to the *Act* with regards to access. The tenant also denies disconnecting the garbrator. The tenant testifies that he wanted to deal with these problems with the other landlord in Ontario as he found it impossible to talk to CW. The tenant agrees he did send QW frequent e-mails to meet to discuss their issues.

The tenant testifies that in the lease agreement it states the guest house will be used from time to time on a short term basis and will not interfere with the tenants' quiet enjoyment. It does not state the guest house will be used full time. The tenant states his wife did not apologise for his behaviour but simply went to see the landlord CW to apologise because the tenants had accidentally turned the water off.

The parties decline to cross examine each other on their evidence or testimony.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation, When a Two Month Notice to End Tenancy is issued by a landlord, if a tenant accepts this Notice even if the Notice is invalid then the tenant is still entitled to claim compensation from the landlords to an amount equivalent to one month's rent. Consequently it is my decision that the tenants are entitled to withhold their rent for August, 2012 to the sum of \$2,900.00 pursuant to s. 51(1) of the *Act*.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has 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. The tenants argue that they have lost their right to quiet enjoyment of their rental property because the landlord has moved full time into the guest house and disturbed the tenants, harassed the tenants and prevented the tenants from enjoying privacy of the rented property. Where a portion of a property is not included in a tenancy agreement or lease then it is my decision that the landlords are entitled to use this section of the property for their own purposes. The tenant would have the burden of proof to show that this was guest house was part of their lease or that the landlord has breached the covenant of quite enjoyment.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser.

It is obvious from the testimony given at the hearing that the relationship between the parties has broken down and there is animosity between the tenants and female landlord. From the testimony I have heard I find that both parties must bear the responsibility towards this animosity as when it is one person's word against that of the other concerning ongoing or vexatious comment then the burden of proof is not met.

I would strongly advise the landlord CW to refrain from airing her grievances against the tenants on any public internet site as these comments made by the landlord or her friends could be construed as inflammatory and if it was to continue then could form a basis for harassment.

With regard to the tenants claim for compensation due to repairs; the landlord agrees that the sprinkler system and dishwasher were not working and dispute attempts they could not find a contractor to carry out repairs and asked the tenants to find someone instead. The landlord states that the pool and the garage door were repaired. When repairs are required on a rented property it is the landlords' responsibility to find someone to make the repairs and although the absent landlords may request that the tenants' cooperate, the tenants cannot be forced to carry out the landlords responsibilities. The tenant has shown in their documentary evidence that they notified the landlord of the repairs required to the dishwasher, the bathroom fan, the toilet and the sprinkler system. The landlords did respond to this e-mail however repairs have still not been carried out. There is no documentary evidence however that the tenants have notified the landlords that the air conditioner or garbrator are not working. Consequently I find the tenants are entitled to some compensation for a loss of the facilities for which they did notify the landlords for various periods of time. As these times have not all be specified or proven then I find the tenants are entitled to a nominal claim for a loss of some facilities as follows:

The sprinkler system - **\$200.00**

The dishwasher - **\$150.00**

The bathroom fan - **\$100.00**

The toilet - **\$50.00**

The tenants have not met the burden of proof with regards to the air conditioner and garbrator. As the tenants evidence has been contradicted by the landlord then the tenant would have to provide corroborating evidence to meet the burden of proof that these items were not working in the manner they were designed for.

The tenants have raised the point concerning Hydro for the guest house. I strongly advise the parties to take readings from the meters at the main house and the guest house and either calculate the amount of Hydro used by the guest house or gain assistance from BC Hydro. The landlords are responsible for any Hydro used in the guest house.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover their **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the Act.

The tenants have been issued with a Monetary Order to the sum of **\$550.00**.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$550.00. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenants are entitled to withhold rent for August, 2012 of \$2,900.00 in compensation for the Two Month Notice to End Tenancy for landlords' use of the property. If rent has been paid by the tenants for August they are entitled to recover this rent from the landlords.

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: August 02, 2012.

Residential Tenancy Branch