



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This reconvened hearing dealt with the remaining portion of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee. The tenant's original application also sought an order seeking cancellation of a 1 Month Notice to End Tenancy for Cause as well as the present issues listed.

The first hearing dealt only with the tenant's request seeking cancellation of the Notice and resulted in the cancellation of the Notice. The Decision on that portion of the tenant's application should be read in conjunction with this Decision.

At the present hearing, the parties appeared, the hearing process was further explained and they were given an opportunity to further ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

The tenant's monetary claim is in the amount of \$3000.00, representing an alleged loss of quiet enjoyment. The tenant contended that she has suffered this loss due to the landlord's constant intrusions onto the property and her demands that her children not use the yard and that she not use the sundeck. The tenant further explained that since the beginning of the tenancy, the landlord has been on the property every day or at least every other day, sometimes peeking into her window, and usually with another set of demands of the tenant and her children. The tenant said that her children were afraid to go into the yard and play and were frightened of the landlord and what she might say to them.

The tenant said that at one instance, it was necessary to phone the police as the landlord refused to leave the sundeck, claiming that it was for the use of the landlord only, who did not live on the property.

The tenant also said that she has become afraid to walk normally in her home or conduct everyday activities due to the constant complaints by the landlord's daughter, who resided in the basement suite, resulting in the continuous letters and communication with the tenant.

The tenant also testified that the landlord has been unreasonable in the amount of phone calls and letters to the tenant, each with new instructions and demands.

The tenant's relevant evidence included recordings of the landlord's voicemail, a print out of the amount of telephone calls, copies of the landlord's letters and eye witness statements.

In response the landlord agreed that she often attended the residential property to care for the yard and garden, cutting the grass and tending to the landscaping. The reason the landlord felt compelled to attend the residential property was to look around to "see if the tenants were doing right."

The landlord agreed that she had informed the tenant that the sundeck was not to be used by the tenant and that it was only for the landlord's use; however she no longer had this requirement when informed by the police that the sundeck was part of the common area.

The landlord said that the tenant's children could use the yard, but that she expected them to pick up after themselves after playing. The landlord in the hearing said the "children were allowed in the yard, but not to throw things."

The landlord said that since the last hearing, she has stayed away from the residential property, except to deliver a document.

The landlord's relevant evidence included a written summary, the tenancy agreement and copies of letters.

Analysis

Based on the relevant written and oral evidence, and on a balance of probabilities, I find as follows:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Additionally Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord, such as entering the rental premises frequently, or without notice or permission.

On a balance of probabilities and due to the landlord's confirmation, I find the tenant has established that the landlord has interfered with the tenant's right to quiet enjoyment, most particularly her right to privacy, by intruding on the tenant for frequent, unannounced visits onto the residential property.

I also find the oral and written evidence establishes that the intrusions began at the beginning of the tenancy and endured until at least sometime later in August 2012, after the landlord received my Interim Decision. I find that the landlord possessed no such right to enter the rental unit and property on the occasions that they did as there was no proper 24 hour notice.

In reaching this conclusion, I was influenced by the landlords' acknowledgement of attending the rental unit and residential property frequently, acknowledging in her written submission that she was checking "her" house twice a day, even when the

tenant was not there, but that it had become necessary to check the house more often during this tenancy.

I was also influenced by the landlord's acknowledgement that she believed she could restrict the tenant's use of the sundeck, which I find to be included as common area in the residential property.

I was further influenced by the landlord's restrictions to the tenant's children about their playing in the yard. I do not find it reasonable that the landlord would expect children of young ages to not throw toys in the yard and I find the landlord's attempt to monitor the children's normal activities to be unreasonable behaviour by a landlord.

The landlord's confirmation that she attended the rental unit and residential property frequently demonstrates a clear lack of understanding by the landlord of her obligations under the Residential Tenancy Act, leading to the tenant suffering a loss of her quiet enjoyment.

Therefore, for the period of the beginning of the tenancy until approximately late August 2012, the date on which the landlord would be deemed to have received my Interim Decision, I find that the tenant suffered a loss of quiet enjoyment due to the landlord's intrusions on her privacy, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenant is entitled to compensation for that loss.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

I find on a balance of probabilities that the ongoing, frequent intrusions, unreasonable demands, unfounded complaints and the restrictions prohibiting the tenant from fully using the common area and residential property by the landlord were instrumental in causing the tenant to end the tenancy early.

I find the landlord's continuing breach of the Residential Tenancy Act throughout this tenancy until late August 2012 entitles the tenant to \$500.00 per month for the devaluation of the tenancy for the three months from June to August 2012.

Conclusion

I therefore find the tenant has established a total monetary claim of \$1550.00, comprised of a devaluation of the tenancy for a loss of her quiet enjoyment for three months at \$500.00 per month and for recovery of the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1550.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The parties are reminded that I have addressed only the issues contained in the tenant's application and should either party have additional matters or concerns concerning this tenancy, they may contact the RTB to seek information concerning their rights and obligations under the Act.

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* and is being mailed to both the applicant and the respondent.

Dated: September 25, 2012.

Residential Tenancy Branch