



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 an Application for Dispute Resolution filed on October 31, 2012, by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenants be granted a Monetary Order?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: their written submission; sworn statements; their notice to end tenancy; and a letter issued to the Agent, W.O. The Landlord and Agent confirmed receipt of the Tenants' evidence.

The Landlord submitted documentary evidence which included, among other things, copies of: his written statement; the tenancy agreement; and cheques. The Tenants confirmed receipt of the Landlord's evidence.

The Agent affirmed that he submitted documentary evidence to the *Residential Tenancy Branch* which included items that were not sent to the Tenants. The Tenants confirmed receipt of the Agent's statement. I explained to the Agent that I would not be considering the remaining evidence which was not sent to the Tenants.

The parties confirmed they entered into a month to month tenancy that began on May 1, 2012. Rent was payable on the first of each month in the amount of \$1,300.00 and in April 2012 the Tenants paid \$650.00 as the security deposit. Since filing this application the Tenants have ended their tenancy and vacated the unit by November 30, 2012.

In addition to their written submissions the Tenants stated they were seeking compensation for loss of quiet enjoyment because the Agent breached sections 28 and 29 of the Act. They noted that he put restrictions on who they could have as guests and he entered their suite without proper notice.

The Landlord stated that he wished to be reasonable with his tenants and questioned how they would tell a tenant to be quiet if it was after 10:30 p.m. He confirmed that the Agent had full rights to manage the property and the lower tenants based on the Agent's choices.

The Agent explained that the house was built between 1942 to 1944 and the noise travels "horribly" throughout. He noted that he can hear everything from downstairs through the ducts and it travels everywhere. He stated that he purchased the house in 1982 and then in approximately 1984 he sold it to the current owner and has remained in the upstairs unit as a tenant.

The Agent affirmed that he has had conversations with the Tenants about their noise levels and he has told them that they could not have male visitors. He also confirmed that he has had one of the Tenants attend his suite where he had a conversation instructing her on what appropriate behavior was.

The Agent explained how he manages the lower Tenants and spoke about when one of them moved in he looked down their access stairs and when he saw the door open he walked in to see how their move was going, and meet their guests. He noted how on another occasion he walked into unit and directly into the Tenant's bedroom and struck up a conversation with the male who was putting her bed together and determined that the male was her brother. He also stated that he had approached the Tenants in the past to discuss their noise levels and would knock on their door and ask to come inside their unit when he wanted to discuss the situations with them.

The Tenants advised that the Agent continued to advise of them of things they could not do because it would wake him up. Specifically, the Agent told them they could not use the bathroom in the evening because flushing the toilet would wake him up; they could not open and close the fridge or cupboard doors at night; and that even walking from the kitchen to the bedroom would wake the Agent up. They stated that they never had a party during their tenancy and on several occasions they would see the Agent peering into their suite through their window and that this happened so often that they felt uncomfortable with leaving their curtains open.

Analysis

The Agent confirmed that he did not provide the Tenants with copies of all of his evidence which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Tenants have not received copies of all of the Agent's evidence I find that that evidence cannot be considered in my decision. I did however consider the Agent's written statement, which the Tenants received, and his testimony.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

I have carefully considered the aforementioned, the documentary evidence, and on a balance of probabilities I find that the Agent has breached sections 28, 29, and 30 of the Act by entering the rental unit without proper notice; by monitoring the Tenant's day to day living activities; by restricting the Tenants use and occupation of the rental property; and by attempting to restrict the Tenants from having male guest or guests at specific times. Those sections of the Act have been reproduced at the end of this decision.

Accordingly, I find the Tenants have met the burden of proof, as listed above, and I hereby award them compensation in the amount of **\$860.00**.

The Tenants have been successful with their application; therefore, I award them recovery of their **\$50.00** filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$910.00** (\$860.00 + 50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: January 30, 2013

Residential Tenancy Branch

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.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

(2) A landlord must not unreasonably restrict access to residential property by

(a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the *Local Government Act*, the *School Act* or the *Vancouver Charter*, or

(b) the authorized representative of such a person who is canvassing electors or distributing election material.

