



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The tenant and her daughter reside in Building "A" of a complex comprised of 2 buildings: Building "A" and Building "B." A full copy of the written tenancy agreement is not in evidence. The parties agree that the original year-long fixed term of tenancy was from November 1, 2011 to October 31, 2012. Thereafter, tenancy has continued month-to-month. Rent of \$700.00 is due and payable in advance on the first day of each month, and a security deposit of \$350.00 was collected at the start of tenancy.

Arising from concerns about the behaviour and conduct of the youth who resides with his mother in the unit located immediately above the tenant's unit, the tenant contacted the landlord by letter dated September 20, 2012. Following the landlord's receipt of the letter, he met with the tenant / applicant, and met with the tenant above, and later issued a "breach" letter dated October 1, 2012 to the tenant above. The landlord stated that both tenants made complaints about each other to him when he met with them independently. There is no documentary evidence of any additional correspondence the tenant may have written to the landlord in regard to her concerns.

While the landlord has offered the tenant an opportunity to re-locate to a unit in Building "B," the tenant has declined and testified that she would prefer to move away from the entire complex. The tenant seeks the equivalent of 1 month's rent, in addition to the

repayment of her security deposit in order to facilitate such a move. In her application the tenant states that she would prefer to end tenancy effective February 28, 2013.

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 **Protection of tenant's right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet Enjoyment."

The documentary evidence submitted by the parties, in addition to their affirmed testimony has been fully considered. In the result, I find there is insufficient evidence to support the tenant's claim for compensation arising from an alleged breach of the right to quiet enjoyment. Specifically, while the tenant is upset by the upstairs tenant(s), I find there is limited evidence of steps undertaken by her to address these concerns with the landlord. In response to the one documented occasion when she did (by letter dated September 20, 2012), I find that the landlord took reasonable steps to respond to the tenant's concerns.

For information, the attention of the parties is drawn to section 45 of the Act which addresses **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As to the disposition of the security deposit when tenancy ends, for the information of the parties section 38 of the Act addresses **Return of security deposit and pet damage deposit**.

Conclusion

The tenant's application is hereby dismissed.

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 28, 2013

Residential Tenancy Branch

