



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Neighbourhood Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, PSF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)* and a monetary order. The hearing was conducted via teleconference and was attended by the tenant, his advocate and the landlord's agent.

The matters in this Application had been adjudicated in a hearing held on March 7, 2012 with a decision by Dispute Resolution Officer D. Simpson written on the same date. The tenant sought a judicial review on the decision from the Supreme Court of British Columbia and the original decision was set aside. In accordance with that judicial review decision this hearing was set up to have the matter reheard by a different officer.

At the outset of the hearing I instructed the participants that the hearing would deal only with matters up to and concluded prior to the date of the original hearing. Both parties acknowledged they understood this instruction.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; provide services or facilities required by law; and to a monetary order for compensation for damage or loss, pursuant to Sections 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on February 1, 2009 as a month to month tenancy for the monthly rent of \$356.00 due on the 1st of each month.

The tenant submits the landlord has failed to fulfill their obligations under Section 28 and 32 of the *Act*, with specific reference to failure to complete repairs; failure to deal with a vermin problem; failure to deal with cat excrement in common areas; and failure to rectify disturbances of the tenant's quiet enjoyment from neighbouring tenants.

The tenant testified that when he began the tenancy there were a number of items requiring repair. The tenant provided the following list in his verbal testimony: no bathroom door or casing; heating elements on his stove; exhaust fan over the stove; no plug covers; no towel rack; no toilet paper holder and no waste pipe in the bathroom sink. The tenant provided extensive testimony on how much of an impact not having the waste pipe had on him, particularly in light of his disability.

In his written details of dispute provided by his previous advocate in the original hearing the list included: no bathroom door; stove not functioning properly; broken stove exhaust fan; uncovered electrical wiring; broken vanity case/mirror; and no towel rack.

The tenant submits he reported these deficiencies and that he was originally told there was no money to complete the repairs and that they were completed 2 or 3 months after moving in. The tenant also testified that there were things that were still not fixed which included his countertops; cupboard doors; the electrical outlets; the main floor drain was not sealed and faucet problem.

The landlord submitted that as the tenancy began such a long time ago her notes on file do not provide any indication of specific requests submitted by the tenant. She stated, however, that the repairs identified by the tenant would have only taken a few weeks to complete.

In relation to the issue of bedbugs the tenant submits, in his original submission, that beginning in the summer of 2009 until the summer of 2011 his unit was infested with bedbugs. The tenant's written submission for this hearing notes that the infestation began in May 2009 and in his testimony he states he reported it in June 2009.

The tenant submits that the landlord refused to do anything about the infestation and that after enlisting the help of an advocacy group the local government compelled the landlord to begin a treatment plan. The landlord testified that they had always had a bedbug treatment program but that the tenant refused, on several occasions, to allow the landlord to conduct the treatment and in fact refused to have his bed removed. Neither party provided any evidence from the local government in regards to complaints or orders against the landlord to begin a treatment program.

The tenant testified that there was also a mouse problem that took the landlord 8 months to rectify. There is no mention of an issue with mice in the original evidence or submission.

The tenant submits that prior to the last hearing the landlord had allowed cats to run free throughout the hallways in the residential property and that these cats had used the planters in the hallways to defecate. The landlord submitted that the building is built around a central courtyard with all units accessed through walkways that are open to the central courtyard.

The landlord acknowledges that there are several cats in the residential property belonging to some of the other tenants in the complex. The landlord testified that the planters have been removed from the walkways, however, there are still cats that use the courtyard.

The tenant submits that he has been disturbed by tenants on either side of him and that the landlord has failed to deal with his complaints about these other tenants and as a result he has suffered a loss of quiet enjoyment.

The tenant submits that the tenant in 415 has bothered this tenant when he is playing his music to complete his daily exercises specifically that the tenant from 415 has increased the volume of his own music to attempt to drown out this tenant's music. The tenant's written complaint about this incident he acknowledges that as tenant 415 increased the volume of his music so did this tenant.

The tenant has provided a copy of a single incident report dated September 2011 that reports on this issue that on Monday at 2:45 p.m. and on Tuesday at 11:00 p.m. The report states a police officer who attended, advised tenant 415 to stop his behaviour and that once the officer left; tenant 415 continued to bother the tenant so loudly that the officer returned and told tenant 415 to stop his behaviour again. The tenant indicates in this report that he is keeping count and this is the ninth incident with tenant 415 – no other reports were provided into evidence.

The tenant also submits that tenant 415 had posted derogatory written propaganda regarding the tenant in the hallways of the residential property in the spring of 2011. The tenant submits that he told the property manager who indicated it would not happen again but it did happen again in September 2011. The tenant submits the landlord told him not to report the incident to police.

The tenant also provided 3 written incident reports about his neighbour in 413 dated December 5, 2011; December 16/December 17, 2011; and February 5, 2012. In the report of December 5, 2011 the tenant submits that on December 2, 2011 at 9:00 a.m. the "crackheads" next door were fighting again and he goes on to describe the events. The report goes on to record noises at 11:45 p.m. on December 4, 2011.

The report of December 16/December 17, 2011 states that "Mr. & Mrs. Crackhead" were "scraping their furniture on the floor then at the time I've given for both nights someone started jumping on the floor for at least a minute each time." The report goes on to say that the tenant attempted to talk with tenant 413 and his guest about the disturbances. The report also indicates that the tenant 413 "a week or so ago" apologized for the fights and blamed his guest but that tenant 413's concern lasted only a short while before the problems began again.

The report of an incident on February 5, 2012 states that the tenant was taking a nap and was awoken by the slamming of a door several times along with "screaming from his crazy meth-head girlfriend".

The landlord submits that the residents in the property are those who have had difficulties maintaining a residence and they are referred to this residential property on a trial basis for a period of 3 months and if the tenants cannot conform to the rules of the property their terms are not renewed.

The landlord also testified that she had received complaints about this tenant and that some of these complaints had come from tenant 415 regarding the tenant's music playing. The landlord also suggests that the tenant is often responsible for antagonizing some of the other residents in the properties by calling them names including calling tenant 415 "retard" and tenant 413 and his girlfriend Mr. and Mrs. Crackhead.

The landlord testified that after the complaints about tenant 415 she offered to both tenant 415 and this tenant an opportunity to move to a different unit so that they would be separated. The tenant submits that the offer for him to move was not acceptable because of the difficulty he would have in moving and because he felt he was being punished for tenant 415's actions. The landlord testified that they had advised the tenant that they would move him and pay for any charges like phone hook-up that the tenant would have incurred.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states 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 Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In relation to the tenant's assertion that he had requested specific repairs to the rental unit when he moved in to the unit the tenant has provided no evidence of the condition of the rental unit at the time that he moved in, such as a copy of a Condition Inspection Report or any written requests for repairs to the landlord.

In addition, I note that the tenant provided extensive testimony in this hearing regarding the lack of a drain pipe in the bathroom that was a major inconvenience because of his disability and his requirement to wash up thoroughly after toileting. However, the lack of drain pipe is not mentioned in his original submissions at all. As such, and even allowing for the fact that the tenant moved into the rental unit 5 years ago, I find the tenant's testimony regarding any repairs requested is not totally reliable.

As the landlord has indicated that she has no records of any requests of any repairs, I find the tenant has failed to provide any evidence to establish that the landlord was informed of any required repairs. Even if I were to accept the tenant had requested these repairs verbally, the landlord submits any repairs of this nature, if requested, would have been completed within a couple of weeks, however, as the tenant has no evidence to substantiate the length of time he says the repairs took (2 to 3 months), I find the tenant has failed to establish any verbally requested repairs took an unreasonable time to complete. I dismiss this portion of the tenant's Application for compensation.

In relation to the tenant's assertion that the landlord failed to act on his complaints regarding bedbugs I find the tenant has failed to provide any evidence that he had reported a bedbug problem to the landlord and that the landlord failed to do anything about it. As the landlord submitted that the tenant had refused treatment the burden remains with the tenant to provide additional evidence to corroborate his claim that the landlord failed to remedy the situation.

While the parties agree that a city inspector did attend the property, neither party provided any documentary evidence as to why the inspector was there or what his report said and what orders were made on the landlord as a result of the inspection, as such, I find the testimony regarding the city inspector's visit has provided no evidence to substantiate the tenant's claim. For these reasons, I dismiss this portion of the tenant's Application for compensation.

As to the cat feces issue, I find the tenant has failed to provide any evidence as to how or when this issue was reported to the landlord. From the testimony of both parties, the landlord has begun to deal with the issue and has removed the planters from the exterior walkways that provide access to each rental unit. I find this is an indication that once the landlord was informed of this problem they took action to rectify it. I dismiss this portion of the tenant's Application for compensation.

In considering the tenant's complaint regarding tenant 415, I find the tenant has submitted a complaint to the landlord and while the complaint states there were 9 other incidents between the parties there are no other complaints submitted into evidence. I find the landlord investigated the circumstances and found that both parties had similar complaints about each other in regard to the music issues and as a possible solution the landlord offered to move both tenants to new units.

In regard to the tenant's submission that tenant 415 was responsible for posting propaganda about the tenant, the thrust of the tenant's issue seems to be that the landlord discouraged him from reporting the issue to police. Regardless of whether or not the landlord did discourage him from doing so, I find that this is not a violation of the *Act*, regulation or tenancy agreement.

Upon review of the documentary evidence and testimony of both parties in relation to the tenant's complaints regarding tenant 413, I accept the landlord's position that the tenant has likely contributed to the situation that has given rise to at least some of these disturbances. From the landlord's testimony and the written complaints, I note that the tenant refers to tenant 413 and his girlfriend using extremely derogatory terms that are highly charged and likely to invoke an emotional response from someone being called these names.

I find the obligation of the landlord to ensure a tenant enjoys freedom from unreasonable disturbance is tempered only by the obligation of the tenant to not engage in behaviour that causes or provokes other tenants and occupants to cause disturbances. While I accept that there was animosity between this tenant and both of his neighbours, I find any landlord faced with neighbours who appear, upon investigation, to be bothering each other will have a difficulty being able to ensure that either one of the tenants has quiet enjoyment of their rental unit.

I find that the landlord took a reasonable and creative approach to try to address the problem between this tenant and tenant 415 by offering to move them both when she had determined there was insufficient grounds to end the tenancy of either of the tenants. I find the tenant failed to accept this offer and therefore failed to take a reasonable step to mitigate any damage or loss resulting from his inability to get along with his neighbour. For these reasons, I dismiss the portion of the tenant's Application seeking compensation for disturbances from other tenants.

Finally, I find the tenant has failed to provide any evidence the landlord has failed to comply with the *Act*, regulation or tenancy agreement and find no reason to order the landlord to comply. I also find the tenant has failed to establish that the landlord not provided services or facilities required by law. Therefore, I dismiss the portions of the tenant's Application seeking orders to have the landlord comply and provide these services and facilities.

Conclusion

Based on the above, I dismiss the tenant's Application in its entirety.

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: March 19, 2013

Residential Tenancy Branch

