



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing, which was adjourned due to the length of the oral submissions of the parties, and reconvened in order to conclude the oral submissions, dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to comply with the Act and a monetary order for money owed or compensation for damage or loss.

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

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

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.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-At the original hearing, the landlord's legal counsel requested that the name of the landlord listed by the tenant in her application for dispute resolution be amended to reflect the actual landlord, as that original name was the CEO for the landlord. A review of the evidence shows that the actual landlord in this matter is as listed in the title page, and I have therefore accepted the legal counsel's request to amend the application.

Issue(s) to be Decided

Has the tenant submitted sufficient evidence to be granted an order requiring the landlord to comply with the Act and an order for monetary compensation?

Background and Evidence

This tenancy began on March 1, 2004, and the tenant's current monthly rent contribution is \$401.

The rental unit is in a multi-unit apartment building in a subsidized housing complex.

In addition to requesting an order for the landlord to comply with the Act, the tenant is applying for a monetary order in the amount of \$10,366.24 for loss of quiet enjoyment for \$7223, and the balance for loss of garden equipment, plants, trees and shrubs.

The tenant submitted extensive documentary evidence, including, the tenancy agreement, copies of lengthy email communication between the tenant and various representatives of the landlord, copies of photographs of the garden area and trees and plants of the tenant, replacement costs of the destroyed plants and trees, copies of photographs of the construction area, and copies of emails from the tenant to her legal advocate.

The landlord submitted extensive documentary evidence, including, an outline of their defense, citing legal authority, the tenancy agreement, a copy of the garden rules for tenants, a copy of balcony/patio use rules, a letter to the tenant from the landlord regarding a 6 ft. fence allegedly installed by the tenant, with a copy of a photograph, another letter to the tenant about the fence, a press release about renovation and retrofit upgrades to social housing using federal and provincial funds, copies of photographs of posting and notices to the tenants in the building on the common bulletin board, project updates to the tenants of the building, various tenant notices during the renovation project, a notice to the tenants regarding their plants and furniture in the common area, a letter to the tenants about the installation of swing out balcony doors, and project management timeline sheets for the project.

Quiet enjoyment-In support of her request for compensation for the loss of her quiet enjoyment, the tenant submitted that the renovation and retrofit project by the landlord started in 2009, and that the tenants were told that each phase was to be started and completed before the next phase. The tenant was led to believe that her part of the building was to be renovated and completed first, for an approximate length of time to be a year. The tenant said that a year of disruption would be acceptable; however the project took approximately three years, with constant disruptions to her for those three years.

The tenant submitted that instead of the first phase being started and finished before moving to the next phase, the contractor would perform work sporadically in all areas in a haphazard way, so that all tenants were inconvenienced for three years. The tenant said that this contractor would start some work and then just disappear for months at the time.

The tenant also questioned that work of the contractor in charge of the renovations, such as incorrect installation of doors and windows, wholesale destruction of shrubbery

and landscaping, without allowing the tenant an opportunity to protect her plants and shrubbery, and leaving a gap in her wall, exposing her to fumes from concrete dust.

The tenant alleged that workman entered the rental unit without notice at times; as well, the contractor exhibited aggressive behaviour towards the tenant.

The tenant is requesting a 50% reduction for devaluation of her tenancy from August 2009 to July 2012.

Monetary compensation –The tenant requests for loss of her plants, trees and shrubs allegedly destroyed by the contractors during the renovation project.

The tenant submitted that before the renovation project, she and other tenants had a meeting with the landlord and the contractor about the landscaping. According to the tenant, she asked the contractor to look at her garden outside her patio and asked if the plants and shrubs could be saved, and was in turn informed that they could be.

The tenant said that everything was fine until the day she saw her trees and other landscaping being bulldozed to the ground. The tenant argued that she was informed by the landlord's agent that that all the trees and shrubs could be dug up and relocated during the project; however this did not happen and the landscaping was destroyed. The tenant also said that the landlord's agent informed her she would be reimbursed for the destroyed plants.

The tenant contended that all the landscaping in the south courtyard (the tenant's area) was destroyed, which was not the case in the north courtyard. The tenant also submitted that she has had some of the plants for years, even prior to moving into the present rental unit.

The tenant said that in another instance, another tenant had left her some landscaping in his will, and this was also destroyed.

The tenant did confirm that none of the destroyed plants, shrubs, trees and landscaping were on her patio, but in the common area, or community garden as referred to by the tenant, or outside her patio area.

Landlord's response-

Quiet enjoyment-The landlord's agent, RY, who had charge of the construction project, contended that the tenants of the building were given numerous notices and updates about the project; however the plan was to go around the perimeter of the building for demolition work, and then begin remediation.

RY admitted that the project took 1 year longer than originally anticipated, but that the scope of the work was in a state of flux due to new, unforeseen issues that developed along the way.

RY said that there were bi-weekly meetings with the contractors and consultants to ensure that the project proceeded as quickly as possible.

Landlord's agent, LT, who manages the property, said that there was a good deal of communication with all the tenants during the project and that the landlord worked with any tenant who requested a transfer. LT said she offered to expedite the transfer of the tenant had she requested such.

Landlord's agent, SC, stated that she has received only positive feedback from other tenants in the building.

The landlord's legal counsel submitted that the building was built in 1975, and beginning in 2008, the building began experiencing widespread deterioration of the building envelope; however full redevelopment of the building was not necessary and the tenants were able to stay in their homes during the project.

The legal counsel submitted that the renovations were necessary to improve the quality of life for the residents and ensure affordable housing was maintained.

The legal counsel submitted that tenants were informed each step of the way during the entire project with notices and information sessions.

The legal counsel also argued that the landlord made every effort to minimize the disruption to the tenants in the building, which became challenging given the various tradespersons required for different aspects of the project.

The legal counsel submitted that the landlord was fulfilling their obligation maintain the premises in accordance with the Act.

Monetary compensation-The landlord's legal counsel contended that the tenant was not entitled to compensation as the tenant failed to present evidence that the plants were completely destroyed, that she did not provide the landlord with an opportunity to view the alleged damaged property, or to take steps to minimize her loss by relocating her plants and shrubs.

LT submitted that the tenants were informed of each phase of the project in order that their plants could be protected and that the contractor did provide assistance in relocating plants to the community garden; however there was a limit on the amount of plants that could go into the community garden.

LT further submitted that the tenant traversed into the construction zone several times, in violation of the landlord's instructions in order to disrupt the construction.

LT further submitted that tenants over the years had planted trees and plants in the common area without permission.

SC submitted that the landlord sent out notice upon notice to the tenants about what to do with their patio plants in order to preserve them and other plants were planted in the common area.

Analysis

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

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I was apparent during the hearing that the tenant's request for an order requiring the landlord to comply with the Act dealt with the section of the Act outlining an entitlement to quiet enjoyment, but was not at present an ongoing issue.

Quiet enjoyment-Under section 32 of the Act, a landlord must repair and maintain a rental unit so that it complies with health, safety, and building standards required by law and is suitable for occupation by a tenant given the age, character and location of the rental unit.

It is important to note that major repair issues and other issues with the rental unit may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 28 of the Act deals with the tenant's right to quiet enjoyment, in this case, freedom from unreasonable disturbance. Sec. 6 of the Residential Tenancy Branch Policy Guideline deals with the tenant's entitlement to quiet enjoyment. In part the Act

establishes rights including “freedom from unreasonable disturbance.” The policy Guideline goes on to state that the modern trend for a determination of loss of quiet enjoyment is *frequent and ongoing interference by the landlord, or, is preventable by the landlord, he/she stands idly by while others engage in such conduct.*

In weighing the evidence, while I accept that the tenant did suffer inconvenience during the ongoing construction project, I find that the tenant submitted insufficient evidence that the landlord was negligent or unreasonably delayed in completing this construction. I find the landlord acted reasonably and responsibly towards the tenants’ needs in the building and met with them and issued multiple notices to advise them of the progress.

I do not find it unreasonable that unforeseen problems arose during demolition and deconstruction, which would further delay the project.

I also considered that the tenant was given an opportunity to remove herself from the situation by the landlord’s offer to relocate, but that she declined to do so.

Due to the above, I find the tenant submitted insufficient evidence that she is entitled to a retroactive rent abatement for a devaluation of her tenancy and I therefore dismiss her request for \$7223, without leave to reapply.

*Monetary compensation-*As to the tenant’s request for reimbursement of destroyed plants and shrubs and garden equipment, I considered that the plants and shrubs were planted outside the patio of the tenant, and was in the common area shared by all tenants. The tenant even claimed for trees and shrubs given to her in a will which were located on another part of the residential property and not under her control.

I find I am unable to grant the tenant compensation for items which were not within her rental unit, which is defined in the Act as the living accommodation rented by the tenant. Although the common area was shared by all tenants, the landlord had control over this area and I accept the landlord’s evidence that they took all reasonable steps to maintain the integrity of the plants in that common area, considering the major construction project which was ongoing.

I also am unable to determine from the tenant’s evidence that the landlord violated the Act or tenancy agreement in the destruction of any plants or shrubs as I find the evidence shows that the tenant was advised by the landlord of any occasion when plants were to be relocated.

Due to the above, I find the tenant submitted insufficient evidence to meet her burden of proof as outlined above, and I therefore dismiss her claim for monetary compensation for destruction of plants, shrubs, and garden equipment.

Conclusion

I therefore dismiss the tenant’s application, without leave to reapply.

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: July 11, 2013

Residential Tenancy Branch