



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Balay Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC, RP, FF

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 / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee. Both parties attended and / or were represented 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

Pursuant to a written tenancy agreement, the tenancy began on September 1, 2011. Monthly rent is due and payable in advance on the first day of each month; the current monthly rent of \$1,084.00 will be increased to \$1,100.00 effective September 1, 2013. A security deposit of \$520.00 was collected near the start of tenancy.

The tenant's unit is situated adjacent to a roof located over a portion of what is a 23 storied apartment building. Through her window(s) the tenant looks out over the roof. Some other tenants (or guests) who reside in units situated above the tenant's unit, throw cigarette butts, used condoms and other miscellaneous refuse onto the roof. The tenant finds that looking out her window(s) onto this refuse is disturbing, and that efforts undertaken by the landlord to clean it up are inadequate. Further, the tenant raised concerns about other tenants' disruptive behaviour which has included jumping onto or off the roof at sometimes odd hours. Additionally, the tenant identified concerns about disturbances created by a recently completed re-roofing project which was noisy and smelly, and in relation to which the tenant alleged she had not been properly informed.

The tenant testified that compensation sought of \$5,000.00 reflects the level and intensity of disruption she has experienced during her entire tenancy.

The landlord does not dispute that refuse finds its way onto the roof, despite notices posted in various places in the building which instruct residents to the contrary. The landlord testified that the roof is inspected every 2 or 3 weeks for the purpose of cleaning up refuse, even while the tenant claims that she has rarely seen anyone doing this job. Further, the landlord testified that the roofing company printed information notices about roof work, and in advance of the work the landlord posted these notices in conspicuous places within the building, and hand delivered them to affected units which included the tenant's unit. Finally, the landlord expressed his wish that the tenant had brought all of her concerns to his attention earlier in her tenancy.

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:**

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 the rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 also addresses "Right to Quiet Enjoyment."

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the documentary evidence and testimony, I find that the tenant has failed to meet the burden of proving entitlement to compensation of \$5,000.00. I make this finding in the absence of documentary evidence that the tenant has previously addressed any of her various concerns with the landlord formally, in writing. I also make this finding in the face of conflicting testimony related to the adequacy of notification provided in regard to recent roof work. I further note the differing views presented by the parties around how frequently the roof is inspected for the purposes of cleaning up refuse.

Following from all the above, I hereby **ORDER** that the landlord inspect and clean refuse from the roof on an average of once per week, but in any event, not less frequently than once every 2 weeks.

Conclusion

I hereby order that the tenant may withhold **\$50.00** from the next regular payment of monthly rent in order to recover the filing fee. All other aspects of the tenant's application are hereby dismissed.

The landlord is hereby instructed to comply with the **ORDER**, as above.

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: August 23, 2013

Residential Tenancy Branch

