



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Argus Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR, O

Introduction

This was a hearing with respect to the tenants' application for a monetary award and for other relief, including repair orders. The hearing was conducted by conference call. The tenants called in and participated in the hearing and the landlord's named representatives also called in and participated in the hearing. Since the tenants' application was filed the tenancy has ended and there is no longer any basis for the claims for repair orders and other relief, apart from the claim for a monetary award.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a ground floor apartment in Kelowna. The tenancy began on August 1, 2012 for a one year fixed term. The monthly rent was \$940.00. The tenants paid a \$470.00 security deposit and a \$470.00 pet deposit before the tenancy commenced.

The tenant testified that in January, 2013 she noticed that there was a musty, mouldy smell when she visited the basement of the building to access her storage locker to put away Christmas decorations. The tenant said she reported the situation to the landlord's representative, but she did not get a reply.

The tenant said the smell became worse and was evident in the laundry room. The tenant said that by June, 2013 the foul smell had entered her apartment and it was coming up from the basement into the rental unit. The tenant inspected their neighbour's storage locker and discovered that his belongings were covered with mould and mildew and there was a putrid odour in the storage area emanating from a hole in the concrete wall inside the storage locker. The tenant said that she spoke to the landlord's representative who responded not to her, but to her neighbour, saying that there was no mould problem, it was just an old building. On June 18, the tenant called

to get some professional advice about the odour and mould problem. A person with some experience with air quality matters attended at the rental property. The tenant took the inspector to the basement storage area. She testified that he noted the smell and told her that it was a serious concern and advised her to stay out of that space, but if she had to enter the space to wear a mask. He gave the tenant the name of a person to contact at Interior Health and he suggested that the tenant and her daughter stay out of the house as much as possible. Mr. G.B., a representative from Interior Health attended at the rental property on June 18th. In a letter to the tenant dated July 3, 2013 he said that he visited the rental property as a result of the tenant's information that an air quality consultant had indicated potentially dangerous air in the lower level. He said that:

The S/E lower locker area contained visible moisture intrusion and mould was present on cardboard and stored material. Through a hole in the concrete wall of the S/W locker, water could be heard running and discharging into the crawlspace; the ceiling of the crawlspace (underside of rental unit floorboards), floor joists etc, were very wet with condensed moisture.

Consultation later the same day with (name of landlord's representative) confirmed his agreement on the importance of stopping the water leak and resolving the situation.

On July 3, 2013, water indicative of recent rain water intrusion existed on the floor in the S/E locker area, water could no longer be heard running in the S/W locker area, and the underside of the (rental unit) floorboards appeared much dryer. However a musty odour was observed in the child's bedroom on the S/W corner of (rental unit), and various areas of the unit (bedroom carpet, bathroom wall and wall trim near toilet) reflected moisture damage. Space on the shower wall enabling moisture entry behind the tub was observed, and insects alleged to be booklice that feed only on fungi and mould were pointed out.

You described temporarily living in an alternate location due to conditions within (rental unit). My experience is that the population has a varied tolerance to moisture and mould exposure, but one thing certain, if moisture remains, mould will follow, as will musty odour and unpleasant living conditions.

On June 18th the landlord learned of a leaking waterline in the crawl space under the rental unit when the landlord's representative attended for an inspection. According to the landlord, its residential manager: "raised the question to the Applicants of being released from their lease effective as soon as they could move." The landlord's representative testified that the tenants refused the offer.

The landlord submitted a chronology of its repair work and steps taken to address the water leak and moisture and mould problems. The landlord said that a notice was posted on the tenant's door on July 12th offering to allow the tenants to move out of the rental unit before July 31, 2013 and prorate the rent for July provided that the tenants agree to perform all required suite cleaning and arrange for a final condition inspection with the landlord's agents. The landlord suggested that a tenant insurance policy would have provided relief and assistance in relocating the tenants.

The tenant denied that she was offered a meaningful proposal on June 18th to end her tenancy early. She said that the landlord's representative who attended on June 18th was upset because the tenant had brought an outside party to inspect the rental property. She said that the landlord's representative stated as follows: "What is it you want? Out of your lease? Fine! Get out!" The tenant said that she was not able to respond at that moment and make the immediate determination to move out of the rental unit. The tenant said that on June 26th she proposed to the landlord's assistant manager that she could move out by June 30th. The tenant said that manager told her she was welcome to move, but would be expected to pay the rent for July.. The tenant said the July 12th letter from the landlord was the first legitimate offer to end the tenancy early.

The tenant said in other documents that she had been offered an opportunity to end her lease effective July 1st, but she was unable to arrange and pay to move her family and all belongings out of the rental unit by July 1, 2013. The tenant testified both she and her daughter were sick; her daughter developed pneumonia and on or about June 20th she found temporary accommodations so they would not have to endure the smell in the rental unit and would have a place to sleep at night.

The tenants and the tenant's daughter stayed away from the rental unit and for the most part slept elsewhere until the tenants fully moved out and vacated the rental unit at the end of July.

Analysis

The Residential Tenancy Policy Guideline No. 6, with respect to the right to quiet enjoyment provides that

The Residential Tenancy Act and Manufactured Home Park Tenancy Act² (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,

- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

The guideline also notes that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

The guideline provides with respect to claims for damages:

• **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

It has not been shown that the water leak in the crawl space was due to negligence or want of care on the part of the landlord. On the evidence the landlord acted promptly after June 18th to fix the problem and ameliorate the moisture and mould problems that had developed.

I find, however, that the moisture, mould and odour problems that were caused by the water leak amounted to a nuisance that significantly affected the tenants' use and enjoyment of the rental unit from mid June until the end of the tenancy. I do not consider that the presence of noxious odours that made the occupation of the rental unit

all but intolerable for this period can be characterized as a temporary discomfort or inconvenience. I interpret the provision in the policy guideline as a reference to more transient phenomena or events. I do not accept the landlord's position that the tenants are not entitled to compensation for loss of quiet enjoyment because they were offered an early end of tenancy and failed to avail themselves of the offer in a timely way. The tenants paid rent for the period in question, but they did not have the quiet enjoyment and full use of the rental unit for the period through no fault of theirs.

The tenants are not entitled to compensation for any personal damage they may have suffered, or any damage to their goods or property in the absence of proof of negligence on the part of the landlord; such claims might be covered by tenants' insurance if they had such a policy, but I find that they are entitled to compensation for loss of quiet enjoyment by way of an award for rent paid during the period. The tenants' were not wholly deprived of the use of the rental unit for the period, but what use they did make of the rental unit was more out of necessity than choice and they spent most nights away from the rental unit. Having regard to all the evidence presented I fix the award to the tenants for loss of quiet enjoyment of the rental unit for the period in question in June and July, at the sum of \$1,200.00.

Conclusion

I grant the tenants a monetary order under section 67 of for loss of quiet enjoyment in the amount of \$1,200.00. This order may be registered in the 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: August 21, 2013

Residential Tenancy Branch

