Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Emaar Properties Canada Ltd. / Macdonald Commercial Real Estate Services Ltd. / Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, FF

Introduction

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 recovery of the filing fee, a hearing was held on July 11, 2013. Both landlord and tenant attended and gave affirmed testimony.

A Preliminary Decision was issued by date of July 16, 2013. In summary, it was agreed that a further written submission would be provided by the tenant to the Residential Tenancy Branch (the "Branch") and to the landlord, by no later than midnight, July 25, 2013. It was also agreed that any additional written submission by the landlord would be provided to the Branch and to the tenant by no later than midnight, August 8, 2013. As well, it was agreed that no further hearings would be convened in this matter and that a decision would be issued principally on the basis of documentary evidence submitted by both parties, and testimony given during the hearing on July 11, 2013.

Issue(s) to be Decided

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

Background and Evidence

The term "landlord" is used here to collectively refer to what is now the former landlord / owner of the rental unit, the former landlord / owner's agent from the real estate services, and the former landlord / owner's agent from the eviction services. The tenant's dealings with the landlord in this dispute were predominantly with the agent representing the real estate services, and the agent representing the eviction services.

Pursuant to a written tenancy agreement, tenancy began on January 1, 2005 and presently continues in full force and effect. The real estate services' management of the unit began on October 1, 2007 and ended in June 2011, when the owner sold the unit.

The tenant's current application for dispute resolution was filed on April 19, 2013, and events surrounding the dispute now took place more than two years ago. In his application the tenant sets out a "brief outline of the complaint against the other parties." The outline sets out a description of events leading up to respective filings of applications for dispute resolution in 2011 and, paraphrased, includes the following:

February 2011

- the guardian of a foreign student responds to the tenant's on-line advertisement for provision of a home stay

- the foreign student moves into the tenant's unit

- the guardian files a complaint about the tenant to the Ministry for Children and Family Development (the "Ministry")

- Ministry personnel attend the unit with members of the Vancouver Police Department (the "VPD")

- the foreign student vacates the tenant's unit

- multiple interactions occur between the landlord and the tenant

March 2011

- inspection of the unit by the landlord (real estate services & eviction services), City of Vancouver Property Use Inspector, and a member of the VPD

- attendance to the unit by staff from Vancouver Coastal Mental Health and a member of the VPD; tenant interviewed;

April 2011

- the landlord (real estate services) issues a 1 month notice to end tenancy pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**

- the landlord and tenant each file an application for dispute resolution

In response to the cross applications, a hearing was scheduled for May 20, 2011 (files # **redacted**). While the landlord attended, the tenant did not. In the result, by way of decision dated May 24, 2011, the tenant's application was dismissed, and an order of possession was issued in favour of the landlord. As well, a monetary order was issued in favour of the landlord for recovery of the $50.00 filing fee.

In the decision the Dispute Resolution Officer (henceforth referred to here as the "Arbitrator") noted in the "Analysis" section of the Decision, in part as follows:

> ...even if I had not dismissed the Tenant's application for his failure to appear, I would still have dismissed his Application for his failure to apply for dispute resolution within the ten (10) days allowed under section 47(4) of the Act.

Subsequently, the tenant applied for review consideration of the decision dated May 24, 2011. As a result, by decision dated June 10, 2011 the tenant's application was allowed, the decision and orders of May 24, 2011 were suspended, and another hearing was scheduled for July 5, 2011. Both parties attended on July 5, 2011, a measure of settlement was achieved, and by decision of July 5, 2011 the previously issued decision and order of possession dated May 24, 2011 were set aside.

Later, in response to the tenant's request for clarification of the decision dated July 5, 2011, by decision dated August 19, 2011 the Arbitrator determined that "the basis for the request is an attempt to change the Decision, not to clarify it." Accordingly, the tenant's request for clarification was dismissed. The Arbitrator also issued a Director's Correction of the decision in which she determined to "make no finding on the merits of either application." While the parties achieved a limited settlement of the dispute, in his current application the tenant seeks compensation arising out of the broader dispute.

Both parties have submitted documentary evidence. The vast bulk of this evidence has been submitted by the tenant, and it includes eight (8) audio tape cassette recordings, in addition to detailed and extensive documentation enclosed within two (2) three-ring binders, and two (2) Cerlox bound volumes. By the tenant's calculations the number of pages submitted totals 1,088.

Evidence submitted by the tenant after the hearing on July 11, 2013 is comprised mainly of a 55 page written submission, and a "To Whom it May Concern" letter from the tenant's witness, "JF," which is dated July 17, 2013.

Within the tenant's 55 page submission, he has summarized the essence of his dispute with the landlord, as follows:

- This matter resulted out of the property manager becoming unnecessarily involved in a mat[t]er between myself and the guardian of my former sub-tenant. The property manager took it upon himself to become a judge, instead of referring the guardian to her lawyer or to the RTB.

- This matter resulted out of the property manager subsequently trying to force me to abandon my rights as a landlord to my sub-tenant under threat of ending my tenancy and police action if I did not.

- This matter resulted out of the property manager in conjunction with a bailiff subsequently attempting to end my tenancy by fraud and attempting to have me illegally evicted, in response to my having refused to accede to their illegal demands and standing up for my rights under the Residential Tenancy Act.

- The actions of the agents of the landlord have caused me significant, unreasonable disturbances to my right to quiet enjoyment, while I was their tenant, and afterward to legally seek justice.

- As a result I have incurred out of pocket expenses as detailed on Evidence Pages #421 to #459.

- As a result I have spent thousands of hours on this matter, as noted on Evidence Page #467, and I am claiming a modest amount for compensation.

As to compensation, the tenant has applied for $10,000.00, the nature of which he describes variously and in part, as follows:

- aggravated damages, arising out of illegal actions taken against the tenant by the landlord and their agents.

- significant, unreasonable disturbances to my right to quiet enjoyment.

- I spent thousands of hours analyzing the evidence and writing out my Documents 1 to 22, as well as photocopying, organizing[,] contacting community legal programs and researching various enactments.

- The amount I am seeking in compensation excluding expenses works out to be about $1.87 an hour. $8392.24 ÷ an estimated minimum 4,500 hours = $1.87 hour.

- The hours I spent from February 10, 2011 to July 5, 2011 preparing my defence for the May 20th, 2011 Dispute Resolution Hearing and then for the July 5, 2011 Review Hearing, alone still amounts to thousands of hours.

Analysis

While all of the evidence submitted by the parties has been considered, a detailed chronology and analysis of the miscellaneous events which transpired and which gave rise to the tenant's application is not set out here. Rather, the decision broadly reflects the result of a consideration of the evidence in relation to the relevant provisions of the legislation, the tenancy agreement, and the Residential Tenancy Policy Guidelines.

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 2 of the Act speaks to **What this Act applies to**, and provides in part:

> 2(1) Despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, rental units and other residential property.

In addition to the landlord, circumstances surrounding this dispute variously involve parties the tenant has described as the "problematic home stay student," the home stay student's guardian, employees of the Ministry, and Officers of the VPD. With the exception of the landlord, I find that the conduct and behaviour of any of the aforementioned individuals / organizations fall outside the jurisdiction of the Act, Regulation and tenancy agreement and, accordingly, I make no findings with regard to any of them.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, compensation claimed by the tenant in relation to materials and / or time spent in association with preparing for hearings is hereby dismissed.

Going forward, consideration here is principally limited to the tenant's claim for compensation arising out of his allegations that the landlord acted illegally and / or specifically committed fraud, and breached the tenant's right to quiet enjoyment.

Fraud is the intentional "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive..." ["Black's Law Dictionary," Sixth Edition, 1990, p.660.]

Residential Tenancy Policy Guideline # 24 speaks to "Grounds for Review of an Arbitrator's Decision," and provides in part as follows:

> Intentionally false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information that would tend to disprove one's case. Fraud may arise where a witness has deliberately mislead the Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

The tenant applied for review consideration of the decision dated May 24, 2011. The two grounds identified in his application were as follows:

> A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
>
> A party has evidence that the director's decision or order was obtained by fraud.

As noted earlier, the tenant's application for review consideration succeeded and another hearing was scheduled. During the new hearing the parties reached a settlement. Ultimately, by way of "corrected decision," the Arbitrator noted in part as follows:

> [Settlement] Agreement
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> After testimony and discussions, the parties announced an agreement to resolve their differences and agreed to a settlement.
>
> The Landlord and the Tenant agreed that due to the new ownership of the rental unit and the new owner's plan to demolish the rental unit, their respective Applications should be withdrawn....

In summary, the parties withdrew their 2011 applications, the original owner / landlord no longer owns the unit, the landlord (real estate services) no longer manages the unit, and as the unit has not presently been demolished, the tenancy continues in full force and effect. Accordingly, I decline to make findings around the tenant's allegations in his current application of fraud on the part of the landlord during the time while the 2011 applications were still active, and while decisions were variously issued / reviewed / subject to a request for clarification / and corrected.

Finally, in her letter to the tenant dated August 23, 2011, a former Executive Director of the Branch stated, in part:

> ....regarding the issue of false testimony and Section 95 of the *Residential Tenancy Act*, as you and I discussed, to pursue it further you would attend your local court registry and swear a private information. Crown counsel would then determine whether or not to proceed with charges against the landlord.

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

Residential Tenancy Policy Guideline # 6 speaks to the right to "Right to Quiet Enjoyment," in part as follows:

> **Basis for a finding of breach of quiet enjoyment**
> Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the

purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is toward relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

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

Section 67 of the Act addresses **Director's orders: compensation for damage or loss**:

67 Without limiting the general authority in section 62(3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline # 16 addresses "Claims in Damages," in part:

Claims in Tort
A tort is a personal wrong caused either intentionally or unintentionally. An Arbitrator may hear a claim in tort as long as it arises from a failure or obligation

under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

An Arbitrator may also hear a claim where there has been a breach of the common law of landlord and tenant. These are evolving legal principles set out by court decisions and may, or may not, be recorded in a tenancy agreement or set out in the Legislation.

Types of Damages

An Arbitrator may only award damages as permitted by the Legislation or the Common Law. An Arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An Arbitrator may also award "nominal damages," which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an Arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.

They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

Criteria Considered When Awarding Damages
If a claim is made by the tenant for loss of quiet enjoyment, the Arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant
- the reason for the disruption
- if there was any benefit to the tenant for the disruption
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant

The period of time at issue spans the stage from early February 2011 when difficulties arose between the tenant and the home stay student, to early July 2011 when a settlement was reached between the tenant and the landlord following sale of the unit. Dealings between the tenant and landlord appear to have come to a head when the landlord issued a 1 month notice to end tenancy for cause in April 2011. Recalling his involvement with the tenant, in his written submission dated July 23, 2013, the landlord (real estate services) states, in part:

> My actions in attempting to have [the tenant's] tenancy ended were based on very serious concerns of his endangering the legal rights and liability of the owner of the property as well as those rights of other residents living nearby and in the house. I have done property management for 27 years and have never come across anything quite like this.

Clearly, the circumstances and events surrounding this dispute have had a lingering impact on the tenant. This is reflected in the tenant's determination to pursue the matter by filing this application approximately two years after the time when events occurred. The impact is also reflected in the significant volume and extraordinary detail of the tenant's documentary submissions. Further, in addition to filing an application for

dispute resolution with the Branch, the tenant filed a complaint with the B.C. Police Complaints Commission and Consumer Protection BC.

While there were a series of events which had an accumulatively unsettling effect on the tenant, it appears that the circumstances surrounding the dispute disturbed both parties in different ways and to a greater or lesser extent. However, the circumstances are complex and involve more parties than simply the landlord and the tenant. Having reviewed the matter with particular regard to the involvement of the landlord, I find that the tenant has failed to meet the burden of proving that the landlord either contravened the legislation, or willfully set out to deprive the tenant of his rights under the legislation or the tenancy agreement.

I also find that the tenant has failed to meet the burden of proving a breach to his right to quiet enjoyment. Specifically, I am unable to conclude that the landlord was negligent, or acted recklessly or with indifference, or that the nature and extent of the landlord's involvement with the tenant was sufficient in depth or duration to constitute a breach of the tenant's right to quiet enjoyment. In the result, the tenant's application for compensation for damages must be dismissed.

Conclusion

The tenant's application is hereby dismissed.

The tenant has the option to apply to the Supreme Court of British Columbia for a judicial review of the decision.

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 29, 2013

Residential Tenancy Branch