Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC
O, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement; and ii) by the landlord for "other" / and recovery of the filing fee.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on December 5, 2010. Monthly rent of $975.00 is due and payable in advance on the first day of each month, and a security deposit of $450.00 was collected. Subsequent to the start of tenancy, the tenant chose to rent a parking spot for which she pays a monthly fee is $15.00.

By way of many pages of hand written text, some of which are letters to the landlord, the tenant has cited a range of miscellaneous grievances against the landlord, but more particularly the building manager. Additionally, the tenant claims variously, but not exclusively, that unit rent is too high, that she has been stalked by a neighbour, that there is a silverfish infestation in the building, and that noise arising from the airport contributes to a breach of her right to quiet enjoyment. The tenant also claims that when she originally moved into the unit several of her potted plants were stolen. Documentary evidence includes written responses from the landlord to the tenant's allegations / concerns.

Arising from all of the foregoing, compensation sought by the tenant in the total amount of $5,425.00, is calculated as follows:

$325.00: *estimated replacement purchase price of plants / pots / soil*

$5,100.00: *rent reduction calculated on the basis of $150.00 x 34 months (January 2011 to October 2013), arising broadly from allegations of numerous breaches of her right of quiet enjoyment*

For his part, the landlord objects to claims made by the tenant, considering many of her letters to be a "barrage of vulgar accusations" which border on "legal harassment." Further, the landlord considers that the tenant's conduct may form the basis for issuance of a 1 month notice to end tenancy for cause.

In response to questions from the landlord's legal counsel during the hearing, the landlord's witness / building manager testified that she sees very little of the tenant on a day-to-day basis. She also testified that she has not knowingly been either rude or abusive in her conduct / behaviour / actions with respect to dealings with the tenant. Further, she denied the existence of any improper relationship with the landlord. Finally, she testified that she has no knowledge of the manner in which the tenant's potted plants allegedly went missing around the time when the subject tenancy began.

The landlord's legal counsel drew attention to the tenant's letter to the landlord of August 27, 2013, which legal counsel considered to be threatening in its tone. The landlord's legal counsel noted one particular paragraph in the letter, likening the tenant's proposal to a "shakedown," as follows:

> You want me out of here to protect your interests and keep the status quo; just cut me a check, no harassment whatsoever, for $1500.00 minimum to cover my costs, and I'm out of your hell hole. No problem.

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

At the outset, the attention of the parties is drawn to sections 28 and 47 of the Act:

> Section 28: **Protection of tenant's right to quiet enjoyment**
> Section 47: **Landlord's notice: cause**

I have carefully reviewed the documentary evidence submitted by both parties, and considered the testimony. In the result, I find that the tenant has failed to meet the burden of proving entitlement to any of the compensation claimed. Specifically, I find on a balance of probabilities that the conduct / behaviours / actions of the landlord and / or the building manager cannot in any way be construed as having breached the tenant's

right to quiet enjoyment. I also find that the landlord has undertaken to respond in a constructive and forthright manner to various concerns raised by the tenant. Further, I find there is insufficient evidence that the building or unit somehow fail to comply with the "health, safety and housing standards required by law," as required by section 32 of the Act which speaks to **Landlord and tenant obligations to repair and maintain**. Finally, circumstances surrounding the fate of the tenant's potted plants will likely never be known for sure. Accordingly, the tenant's application is hereby dismissed.

In the landlord's submission he refutes the claims made in the tenant's application, and he has sought only to recover the filing fee for his own application. Such a submission could have been made in response to the tenant's application without the need for the landlord to file his own application. In the result, the landlord's application to recover the filing fee is hereby dismissed.

Going forward, the parties are advised that the allowable amount of a rent increase that becomes effective in 2014 is 2.2%. For example, rent of $975.00 would be allowed to increase by $21.45 ($975.00 x 2.2%), bringing the total payable to $996.45 ($975.00 + $21.45). Related provisions in the Act are as follows:

Part 3 – What Rent Increases Are Allowed

Section 40: **Meaning of "rent increase"**
Section 41: **Rent increases**
Section 42: **Timing and notice of rent increases**
Section 43: **Amount of rent increases**

Conclusion

Both applications are hereby dismissed.

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: October 21, 2013

Residential Tenancy Branch