Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AARTI INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 23, 2013, by the Tenant to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for the return of their security and or pet deposit; for other reasons; and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. The Tenant affirmed that she did not receive evidence from the Landlords. The Landlord indicated that he thought that his co-worker had served the Tenant with their evidence; however, there was no information on his file relating to service of that evidence.

Section 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that the respondent's evidence must be served to the *Residential Tenancy Branch* and the other party. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Tenant has not received copies of the Landlords' evidence I find that the Landlords' evidence cannot be considered in my decision. I did however consider the Landlords' testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties confirmed that the Tenant entered into an initial six month lease that began on December 1, 2011. A subsequent lease began in June 2012 and was set to end on June 30, 2013. Rent was initially $780.00 and effective June 1, 2013, the rent was increased to approximately $804.00 and was payable on or before the first of each month. On December 1, 2011, the Tenant paid $390.00 as the security deposit. On May 6, 2013, the Tenant issued her written notice to end tenancy and the tenancy ended June 30, 2013. No move in condition inspection report form was completed. The move out condition inspection report form was completed and signed on July 4, 2013, during which the Tenant wrote her forwarding address on the condition inspection form.

The Tenant testified that she was seeking $1,560.00 in compensation for the return of double her security deposit (2 x $390.00) plus an amount equal to one month's rent ($780.00) as compensation for loss of private quiet enjoyment.

The Tenant pointed to her evidence which included a copy of the envelope that was post marked July 23, 2013 which she received on what she recalls to be July 25, 2013. This envelope included a cheque for $390.00 as her security deposit and the move out inspection report form. She argued that this cheque was issued too late. She stated that she recalls sending the Landlord her forwarding address by e-mail prior to the end of June 2013 but could not find the actual e-mail during her testimony. She knows for certain that she provided her address on July 4, 2013, when she signed the move out inspection form.

The Tenant submitted that she was entitled to compensation for losing the enjoyment of her suite and having to move as a result. She indicated that she had had problems with the upstairs tenant in 2012 but those matters were resolved by her and a previous property manager. Then issues with this tenant started again in early 2013 where he was harassing her and causing loud noises. She stated that at first she attempted to deal directly with the tenant herself by asking him to turn down his music but when that failed she contacted the police. The police informed her that she needed to deal with her landlord about the issues. She began sending the Landlords e-mails and text messages to complain about the harassment and noise complaints. She pointed to her evidence which included some of the e-mails and text messages which summarize events from March 23, 2013 and continued up to June 12, 2013.

The Tenant stated that at one point she was instructed to deal with a different property manager who would handle the situation. She was told the Landlords would be evicting the upstairs tenant because of other issues. She argued that the Landlords did not keep her informed about any actions they were taking to resolve the issues and at no time did she ever see any of the Landlords attend the property to investigate her complaints. She was informed of one occasion when the Landlord had said they attended the unit but she was never notified in advance of their attendance. She reiterated how she had sent numerous complaints and even invited the Landlords to call her so they could hear the volume of noise she was dealing with but no one ever called her when the noise was happening.

The Tenant testified that she had to deal with the noise issues for up to sixteen days in April and that things did not occur as often in May but the noise seemed to be louder when it did occur in May. The noise continued well into June but around the middle of the month she simply stopped notifying the Landlords because she was moving out at the end of the month.

The Tenant stated that she was a student and worked part time in the evenings at a veterinarian clinic. Her work had a private room with a couch that she would occasionally go to get some sleep when the noise continued to the point she could not stand it any longer. She also went to her mother's home on many occasions to get some quiet and sleep. She argued that she really liked the area and did not want to have to move away but when nothing was getting resolved she felt she had no choice but to incur the costs of moving.

The Landlord confirmed that this matter was handed over to him from a less experienced property manager. He stated that the Tenant's complaints were taken seriously and he did all that he could do. He did attempt to evict the upstairs tenant but they were not successful because they were not able to prove the case. He indicated that he had had some verbal conversations with the upstairs tenant but at no time was that tenant issued written warnings about his behaviour and the noise complaints. He stated "how much more of a warning was required" while questioning if there was a stricter warning than an eviction notice. He said he felt the first eviction notice was enough of a warning to indicate to the tenant that the matters were serious.

The Landlord testified that the upstairs tenant was initially served a 1 Month Notice to end tenancy for cause on April 2, 2013, and when they were not successful with that case they issued him a 2 Month Notice for landlord's use on May 9, 2013. The upstairs tenant disputed the 2 Month Notice and during the June 14, 2013 hearing he withdrew his dispute and indicated that he was moving out at the end of June.

The Landlord confirmed that the Tenant's forwarding address was provided on July 4, 2013, during the move out inspection. The Tenant was issued a cheque in the July 17, 2013, cheque run for the full security deposit. The Landlord stated that he could not provide testimony as to when that cheque was actually mailed but did confirm the envelope which was provided in the Tenant's evidence was sent from their business address.

In closing the Landlord stated that he does not understand the Tenant's claim for compensation as they did what they were required to do to resolve the noise complaints. He surmised that he had done all he could do by speaking with the upstairs tenant, issuing him an eviction notice, and by dropping by, unannounced, on a couple of evenings around 9:00 or 10:00 p.m. He could not testify as to the exact dates that he stopped by but he wanted it noted that during those unannounced visits he could not hear any loud noises. He confirmed that this upstairs tenant was difficult to deal with and that he became more belligerent as they continued to deal with him. He did not respond to the Tenants invitations to call and listen to the noise because he was sleeping when those texts were sent.

The Tenant stated that it was not her intent to get someone evicted; rather, it was her intent to resolve the issue so she could continue to live in her home in peace. When she was not kept informed of the manner in which the Landlords were dealing with the situation she felt she had no choice but to give her notice and move, even though it was her desire to stay.

Analysis

Section 28 of the Act provides that 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.
>
> [my emphasis added]

In ***Lawrence v. Kaveh,*** New Westminster, B.C. Registry, October 4, 2010, The Honourable Madam Justice Fenlon provided that common law pertaining to the Right of Quiet Enjoyment is summarized as follows:

> *At common law, the covenant of quiet enjoyment "promis(es) that the tenant ... shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy." A landlord does not have a reciprocal right to quiet enjoyment.*

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists. Once notified a landlord would be required to take reasonable steps to resolve the issue.

In this case I find there to be insufficient evidence to prove the Landlords took reasonable steps to resolve the issues that were caused by the upstairs tenant. I make this finding in part because the upstairs tenant was never provided written warnings which clearly outline the issues and subsequent consequences of eviction if the problem behaviour continued. There is insufficient evidence to proof the Landlords conducted any sort of investigation or in fact stopped by late at night to listen for problems. Furthermore, there was no evidence to prove the Landlords discussed the situation with the Tenant or kept the Tenant informed on the actions they were taking to resolve the matters; other than one indication in early April that they would be evicting the upstairs tenant for other reasons. Simply issuing eviction notices for cause or landlord's use, without the due diligence of written warnings and an investigation; do not constitute taking reasonable steps to resolve an issue. Rather, it simply aggravates the situation and prolongs the process of eviction as we have seen here.

Policy Guideline 6 states: "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".

Based on the above, I find the Tenant has met the burden of proof to establish a significant loss of quiet enjoyment which began mid to late March 2013 and continued intermittently through to June 30, 2013. This loss of quiet enjoyment ultimately led the Tenant to give her notice to end her tenancy and incur moving costs which she would not have incurred had the matter been dealt with accordingly. As such I find that her claim for $780.00, an amount equal to one month's rent to be reasonable, given the

circumstances presented to me. Accordingly, I award the Tenant loss of quiet enjoyment in the amount of **$780.00.**

The evidence supports that the tenancy ended June 30, 2013, and the Tenant provided her forwarding address, in writing, on the move out condition inspection report form on July 4, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 19, 2013. The evidence proves the refund cheque was not mailed until July 23, 2013. When specific timeframes are set out in the Act, parties must always take into consideration service times based on the method they choose. Section 90 of the Act stipulates that when a document, or in this case a refund, is sent by mail, the article is not deemed received until the fifth day after it was mailed.

In this case the cheque was actually received on July 25, 2013, twenty one days after the Landlord was provided the Tenant's forwarding address.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double her security deposit plus interest in the amount of **$780.00** (2 x $390.00 + $0.00 interest).

The Tenant has succeeded with her application; therefore, I award recovery of the **$50.00** filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Loss of quiet enjoyment	$ 780.00
Double Security Deposit (2 x $390.00) + $0.00 interest	780.00
Filing Fee	50.00
SUBTOTAL	$1,610.00
LESS: Refund deposit received July 25, 2013	-390.00
Offset amount due to the Tenant	**$1,220.00**

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **$1,220.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia 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: October 31, 2013

Residential Tenancy Branch