



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF, O

Introduction

This hearing dealt with applications from both the landlord and the tenant. The tenant applied to cancel a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and for an order that the landlord comply with the Act, Regulation, or tenancy agreement. The landlord applied for an order of possession and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order that the landlord comply with the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree that the tenancy started May 1, 2013 and the tenant is obligated to pay \$780.00 rent monthly in advance on the first day of the month.

The landlord's evidence is that he served the tenant with a Notice to End Tenancy for Cause (the "Notice") dated February 26, 2014 which specifies a move-out date of March 31, 2014. The Notice gives the following reasons why the landlord seeks to end the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant of the landlord
- Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord

The landlord's evidence is that he issued the Notice for the following reasons:

1. The landlord feels he is harassed by the number of complaints the tenant makes about one of the other tenants.
2. The tenant has, on at least one occasion, banged on the door of another tenant and swore at her.
3. The tenant installed security cameras outside the rental unit.
4. The landlord would like to empty the rental unit occupied by the tenant.

The landlord's evidence is that the tenant also got a dog without the landlord's permission, however the landlord states the tenant's dog is not one of the reasons he seeks to end the tenancy.

The landlord's evidence is that he received numerous text messages from the tenant on January 11, 23, 25, and 26, 2014 complaining about the frequency with which another tenant opens and closes the motorized overhead garage door. The tenant in this application lives in a suite above the garage and he is bothered by the noise. The tenant who occupies the main floor of the house (the "Main Floor Tenant") has possession of the garage. The landlord's evidence is that he called the Main Floor Tenant who told the landlord they only open and close the motorized garage door about twice a day.

The landlord also says the tenant in this application has sent him numerous text messages regarding one of the other tenants parking in front of the door to the tenant's suite. The landlord's evidence is that the tenant has sometimes sent him five text messages in the space of one hour to complain about this. The landlord's evidence is that the tenant sent him text messages on February 10, 15, 17, 23 and 25, 2014 to complain about someone parking in front of his door. The landlord's position is that the Main Floor Tenant is entitled to use the parking spot in front of the tenant's door.

The landlord also gave evidence that the tenant has frequently complained to him about the Main Floor Tenant's dog barking excessively. The landlord says he took steps to address this by asking the Main Floor Tenant to keep her dog inside when she is not at home. He states the Main Floor Tenant said she would do so. It is the landlord's position that the tenant is partially responsible for the problem, since the Main Floor Tenant's dog barks when the tenant goes outside to smoke or when it becomes aware of the tenant's dog.

The landlord gave evidence that the Main Floor Tenant feels harassed by the tenant in this application. The landlord's evidence is that the tenant twice called the SPCA regarding the Main Floor Tenant's treatment of the Main Floor Tenant's dog. The landlord's evidence is that the tenant in this application twice banged on the Main Floor Tenant's door. His evidence is that on one occasion, the tenant was angry about the Main Floor Tenant's dog barking and he swore at the Main Floor Tenant.

The landlord gave evidence that the tenant installed two security cameras last year, one which faces the parking spot in front of his door and one which faces the back alley. It is the landlord's position that this is illegal recording and an invasion of privacy for the other occupants of the rental building. The landlord provided a copy of a letter he wrote the tenant on February 15, 2014 asking the tenant to remove the security cameras because they contravene "BC privacy law". The landlord also provided two letters from the Main Floor Tenant, in which she states that the tenant in this application has caused her stress by banging on her door requesting that she move her car, by calling the SPCA, and by using the security cameras whereby he can see them enter and exit their rental unit.

The landlord also gave evidence regarding a period of time during which the motorized garage door did not work because the breaker switch, located in the tenant's rental unit, was switched off. However, the landlord did not identify this incident as one of the reasons he issued the Notice, so I have not dealt with that evidence. Similarly, I have not dealt with evidence concerning the tenant's dog.

The tenant gave evidence that the Main Floor Tenants were using the motorized garage door as their main entrance in and out of their rental unit, even when they were on foot. He states he would not be disturbed if the Main Floor Tenants only used the motorized garage door to move their vehicle in or out of the garage.

The tenant's evidence regarding parking in front of his rental unit door is that the other tenants park so that their vehicles are only 8 – 10 inches from his door, forcing him to turn sideways to enter or exit his rental unit.

The tenant's evidence regarding the Main Floor Tenant's dog is that the Main Floor Tenant leaves her dog in the backyard all day and in the garage all night, and does not permit the animal inside the rental unit. The tenant's evidence is that he contacted the SPCA because the Main Floor Tenant's dog was not provided with shelter from the elements. The tenant agrees he has spoken with the Main Floor Tenant directly, twice about the way she parked her vehicle in front of his door and once about the Main Floor Tenant's dog barking. He denies that he swore at the Main Floor Tenant.

The landlord provided a copy of an order from the SPCA to the Main Floor Tenant, instructing her to take certain steps within two weeks to better care for her dog.

The tenant agrees he installed security cameras outside his rental unit. He says he did so because there was drug activity occurring in the area. His evidence is that the cameras do not face anyone's window or backyard and the cameras are not illegal.

The tenant claims he is entitled to a monetary order for a breach of his right to quiet enjoyment of his rental unit, pursuant to Section 28. He claims an amount of \$300.00 for each month of his tenancy during which he has contended with excessive noise from the Main Floor Tenant. The tenant's evidence is that he has complained to the landlord between 50 and 100 times, commencing in the first week of his tenancy. His evidence is that, at worst, the Main Floor Tenants used the motorized garage door 15 to 20 times per day. He suggests that the motorized garage door be used only to park vehicles, and that the mechanism be serviced to see whether it can close more quietly.

The tenant states that the Main Floor Tenant's dog barks outside about five or six hours each day. The tenant's evidence is that the dog barks less frequently at night, when it is left in the garage, but it barks every night and sometimes more than five times in a night.

The tenant seeks an order that the landlord comply with the Act by providing him with a copy of the tenancy agreement and by giving him written permission to keep a dog.

Analysis

Should the Notice be Canceled?

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified four causes for ending the

tenancy. If the landlord proves at least one of those causes, the Notice will not be canceled. However, if the landlord does not prove any of the four specified causes, then I must cancel the Notice.

It is the landlord's position that he has been unreasonably disturbed by the tenant's frequent text messages to complain about another tenant. The tenant's concerns are chiefly about the Main Floor Tenant using the motorized garage door excessively, allowing her dog to bark excessively, or parking too close to his front door. I find the tenant's concerns are reasonable and it is a reasonable expectation that the landlord do something about these issues. The landlord has not succeeded in solving these problems to date. The landlord might address these problems by, for example, giving the Main Floor Tenant a warning letter to indicate that the motorized garage door should only be used when moving a vehicle in or out of the garage. The landlord could also advise the tenants who use the parking spot in front of the tenant's door, in writing, to park a specific distance away from the door.

I find that the concerns raised by the tenant are within the normal duties of a landlord to address. That said, there may be a point where the quantity of complaints from the tenant may become unreasonable. I find that the quantity of complaints was not unreasonable in this circumstance, and I note that the tenant took an appropriate step in filing an application for dispute resolution when his concerns were not adequately addressed. I find that the tenant's frequent text messages do not constitute significant interference or unreasonable disturbance for the reasons above. Also, I note that a text message may be dealt with at a later time if it is received at an inconvenient time.

I find that the landlord has not established that the tenant jeopardized seriously (or at all) the health, safety or lawful right of another occupant or the landlord. I accept that the Main Floor Tenant has felt harassed by the tenant, however I find the tenant's behaviour toward the Main Floor Tenant is not egregious enough to constitute significant inference or unreasonable disturbance, or to jeopardize the health, safety, or lawful right of the Main Floor Tenant. Further, the SPCA order provides evidence that the tenant took appropriate steps in contacting the SPCA regarding the Main Floor Tenant's treatment of her dog.

The landlord asserts that the security cameras installed by the tenant are an illegal activity. The tenant asserts that the security cameras are not an illegal activity. Neither party provided evidence to support their position regarding the legality of the security cameras. I find that the landlord has not established, on a balance of probabilities, that the installation of security cameras by the tenant is an illegal activity.

The landlord also indicated that he wished to empty the Coach House rental unit. Should the landlord wish to convert the rental unit to a non-residential use or to use the rental unit for himself or a close family member, he may follow the process set out in Section 49.

For these reasons, I find the landlord has not proven any of the specified causes for ending the tenancy. Accordingly I order that the Notice is cancelled. Since the Notice is not effective in ending the tenancy, the landlord is not entitled to an order of possession.

Is the tenant entitled to a Monetary Order?

A tenant's right to quiet enjoyment of the rental unit, set out in Section 28, includes a right to be free from unreasonable disturbance. Such disturbance may include unreasonable and ongoing noise.

According to Residential Tenancy Policy Guideline **6. Right to Quiet Enjoyment** ("RTB Guideline 6") at page 6-2:

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, I find that the landlord was made aware of the following problems early in the tenancy: the Main Floor Tenant's excessive use of the motorized overhead garage door, the Main Floor Tenant failing to take reasonable steps to prevent her dog from barking excessively, and one or more other people parking too close to the tenant's front door. The landlord's evidence is that he took steps by speaking to the Main Floor Tenant about the first two issues (the garage door and the dog) and the Main Floor Tenant advised she did not use the garage door excessively and would bring her dog inside when she was home.

I accept the evidence of the tenant in this application; that the problems with the garage door and the dog continued. I find that the tenant notified the landlord that the problems continued. It appears that the landlord then ceased his efforts to deal with the noise problems and instead sought to evict the tenant in this application.

The landlord's position is that the Main Floor Tenant is permitted to park in front of the tenant's door. This appears to be reasonable, as long as the tenant in this application has sufficient room to enter and exit his rental unit in a normal fashion. I accept the

tenant's evidence that other parties sometimes park in such a way that he cannot enter and exit his rental unit in a normal fashion.

For the reasons above, I find the landlord's inaction has resulted in a breach of the tenant's right to quiet enjoyment.

Where a tenant has proven, on a balance of probabilities, that the landlord's actions or inaction has resulted in a breach of the tenant's right to quiet enjoyment, the tenant may claim for damages equivalent to the amount by which the value of the tenancy has been reduced.

According to RTB Guideline 6:

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.

In this case, the severity of the noise problem is not such that the rental unit was unusable. Rather, I find the noise problem was an annoyance that continued from the beginning of the tenancy until this point (a period of about ten months). I award the tenant nominal damages of \$100.00 per month, for a total of \$1,000.00. The tenant is also entitled to recover his RTB filing fee of \$50.00. The total owing the tenant is \$1,050.00 and the tenant may deduct this amount from his rent.

Order that the Landlord comply with Act, Regulation, or tenancy agreement

The tenant is entitled to a copy of the tenancy agreement he signed. I order the landlord to provide the tenant with a copy of the signed tenancy agreement. The tenancy agreement, which is in evidence, is silent on the issue of pets. Where a tenancy agreement is silent as to pets, a tenant may keep a pet. Any changes to the tenancy agreement must be made with the consent of both parties. For these reasons, I dismiss the tenant's application for an order that the landlord agree in writing to allow the tenant's dog.

Conclusion

I order that the Notice is cancelled. I dismiss the landlord's application for an order of possession. I award the tenant \$1,050.00 which the tenant may deduct from his rent. I order that the landlord provide the tenant with a copy of the signed tenancy agreement.

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: March 26, 2014

Residential Tenancy Branch

