



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
 MT CNC MNDC LRE RR FF

Preliminary Issues

Upon review of the applications before me, the Tenant testified that they moved their personal belongings out of the unit by January 31, 2014 and retained possession of the unit until February 14, 2014, to complete the cleaning. He stated that they were entitled to keep the unit until February 14, 2014 because that was the effective date of the 10 Day Notice that he received on February 2, 2014.

The Tenant stated that they wished to proceed with their monetary claim of \$830.00 plus the filing fee and withdrew the remainder of their claim.

The Landlord confirmed that he regained possession of the unit and he was no longer seeking an Order of Possession.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on February 11, 2014, seeking a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on January 21, 2014, seeking to obtain a Monetary Order for loss of quiet enjoyment and to recover the cost of the filing fee from the Landlord for their application.

The Landlord and his two Agents appeared at the teleconference hearing and each provided evidence on behalf of the Landlord. The Tenant A.E. attended the teleconference hearing and advised that he would be representing himself and B.B. as B.B. is currently deployed on an away mission with the Military. Therefore, for the remainder of this decision, terms or references importing the singular shall include the plural and vice versa.

The Tenant acknowledged receipt of evidence submitted by the Landlord; however, the Landlord did not receive a copy of the Tenants' evidence which consisted of a one page letter dated February 18, 2014, signed by A.E. The Landlord indicated that he received a second package of evidence from the Tenants a few days ago. The second package of evidence had not been placed on the *Residential Tenancy Branch* file at the time of this proceeding.

Section 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure* provide information about the service of evidence. Considering late evidence or 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 Tenants have not served their evidence in accordance with the Rules of Procedure I find that evidence cannot be considered in my decision. I did however consider the Tenant's 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

1. Should the Landlord be issued a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?
2. Should the Tenants be issued a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties confirmed they entered into a written tenancy agreement that began on May 22, 2012. Rent began at \$770.00 per month and was subsequently increased to \$830.00 which included an increase in accordance with the legislation and an increase to accommodate A.E. moving in as the second occupant. On May 11, 2012, the Tenants paid \$380.00 as the security deposit.

The Landlords testified that a 1 Month Notice for cause was served upon the Tenants on January 20, 2014 and a letter was issued to the Tenants outlining the reasons for the Notice. The Tenants responded by serving the Landlord with their Application for Dispute Resolution to dispute the 1 Month Notice. The Landlord stated that they were

led to believe that the Tenants intended to continue to occupy the unit because they were disputing the Notice.

The Landlords stated that at no time did the Tenants inform the Landlord that they were vacating. On February 1, 2014, rent was not paid so the Landlord posted a 10 Day Notice to the Tenants' door on February 2, 2014. On February 3, 2014 the Landlord posted a notice of entry and when he entered the suite on February 6, 2014 he found that the Tenants had vacated the unit. The Landlords pointed out that all of the aforementioned documents were provided in their documentary evidence.

When the Landlord attended the rental unit on February 14, 2014, he found an incomplete, unsigned, mutual agreement to end the tenancy and all but one key laying on the floor. They are still missing one of the main building keys.

The Landlords noted how the Tenant testified that they vacated the unit by January 31, 2014 and remained in possession until February 14, 2014, which further supports their claim for February rent of \$830.00.

The Tenant disputes the Landlord's claim for February 2014 rent and argued that they had moved out all of their personal possessions before February 1, 2014 and they had finished cleaning and returned the keys by February 14, 2014, which was the effective date of the 10 Day Notice. The Tenant also indicated that they had forfeited their security deposit to the Landlord as compensation for the half month's rent for February 2014.

The Tenant testified that their claim for \$830.00 was for compensation for loss of quiet enjoyment during the last six months of their tenancy. He argued that since he moved into the unit the Landlord continued to knock on their door and he would constantly buzz their buzzer. He said that he works nights and the Landlord would show up at their unit buzzing and knocking as early as 8:30 in the morning. There did not seem to be any limits to the time when the Landlord would appear.

The Tenant argued that there was one occasion where the Landlord entered their unit without proper notice at a time when he was home standing on the balcony with a friend. He said he did not hear a knock and the Landlord came into his unit, walked past the bathroom, and claimed he was there to check on a problem with plumbing that was causing water to leak into another unit. He did not know the date of this occurrence but recalls another time when the Landlord just showed up and knocked and requested to relieve the pressure in the water pipes because he was working on the plumbing in another unit.

The Tenant summarized the issues by saying the Landlord continuously harassed them and their friends about smoking. He later met with the Landlord to attempt to resolve the issues but there continued to be interruptions to their quiet enjoyment, which is why they are seeking compensation.

The Landlord disputed all allegations put forth by the Tenant. They argued that they never had a personal problem with the Tenant and they never refused him the opportunity to move in with the existing Tenant. They simply agreed to let him move in for the additional rent required for a second occupant. Problems increased after A.E. moved in and since issuing the Notice they began to experience problems with the hot water continuously running and an attempted break and enter into the boiler room. They never had problems like these before and have not had any problems since these Tenants moved out.

The Landlord owns and manages the entire building, which is a non-smoking building. The Landlord pointed to section 43 of the tenancy agreement whereby the parties agreed that the building was non-smoking. They testified that shortly after A.E. moved into the unit they started receiving complaints from other tenants that people were smoking on the Tenants' balcony. So, in order to protect the rights of all tenants, the Landlord had to deal with the Tenants so they would stop smoking. They pointed to their evidence which included confirmation that B.B. smoked a pipe and A. E. smoked cigarettes. They also included photos displaying the cigarette butts lying on the ground.

The Landlord argued that he never entered without notice or without knocking in emergency situations. He stated that he knows of five separate instances where he had to attend to emergency issues relating to water flooding into other units or into the parking area, or to respond to the Tenants' requests for maintenance.

The Landlord spoke of an incident where he attended the unit in response to a complaint and B.B. followed the Landlord down the street shouting false accusations at him. B.B. continued to yell after the Landlord in such a tone that a neighbor came out and offered to call the police. At that point B.B. left and the Landlord, who was shaken up by the ordeal, returned home.

In closing, A.E. stated that he never signed the tenancy agreement, rather he was asked to sign an amendment to add him to the tenancy, so he was not aware that the building was a non-smoking building. Once he was told about the non-smoking rule he did not smoke on the property, he smoked at the sidewalk. He disputed the Landlord's witness statement provided in evidence, and argued that they filed a police complaint against the Landlord.

Prior to the close of this hearing the Landlord requested that B.B. return the building keys by registered mail immediately upon his return home from sea.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Landlord's Application

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement, despite any disputes they might have with their landlord.

In this case the undisputed evidence provided that the Tenants were issued a 10 Day Notice for unpaid rent on February 2, 2014 and they remained in possession of the unit until February 14, 2014, the effective date of the Notice.

At the time the 10 Day Notice was issued, the Tenants were still in possession of the unit and were required to pay their rent on the first of February in accordance with section 26 of the Act. Accordingly, I award the Landlord the unpaid February 2014 rent of **\$830.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Tenants' Application

The Residential Tenancy Act (the Act) section 29, addresses the rights and obligations of landlords with respect to entry into a rental unit as follows:

- (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
 - (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The *Residential Tenancy Policy Guideline # 7* provides that at common law, the tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the landlord has the right to enter the rental unit under certain conditions.

The Tenants alleged that their right to quiet enjoyment was breached because the Landlord entered their unit without notice and knocked or rang their buzzer at times that created an interruption or were unnecessary. The Landlord argued that he only ever entered without notice during emergencies involving floods, and he attended at other times during the day, to deal with complaints of smoking received from other tenants.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In this case I find the Tenants provided insufficient evidence to support their allegations of loss of quiet enjoyment. I make this finding in part because the Landlord disputed the Tenants' arguments and provided documentary evidence which indicates that there were emergency situations. The Landlord also provided evidence of a chronological list of dates and times when those emergencies occurred. Accordingly, I dismiss the Tenants' claim for loss of quiet enjoyment, without leave to reapply.

The Tenants have not been successful with their application; therefore, they must bear the burden of the cost to bring this application forward.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid February 2014 Rent	\$830.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$880.00
LESS: Security Deposit \$380.00 + Interest 0.00	<u>-380.00</u>
Offset amount due to the Landlord	<u>\$500.00</u>

Conclusion

The Tenants' application is dismissed, without leave to reapply.

The Landlord has been awarded a Monetary Order in the amount of **\$500.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants 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.

I HEREBY ORDER B.B. to return all keys to the Landlord by registered mail, immediately upon his return from his current mission at sea.

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 14, 2014

Residential Tenancy Branch

