



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

Decision

Dispute Codes: MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of value of the rental suite and reimbursement for the cost of temporary accommodation. The tenant is also seeking an order to force the landlord to comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing, the parties advised that the tenants have permanently vacated the rental unit as of April 29, 2014.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and a retro-active rent abatement?

Background and Evidence

The tenancy started in June 2012. Rent began at \$1,475.00 per month increasing to \$1,530.00 as of November 1, 2013. A security deposit of \$737.50 was paid.

The tenant testified that between March 2013 and April 29, 2014 their tenancy was continually disrupted by noise and harassment from the occupants living below them. The tenant testified that they repeatedly complained to the landlord but the situation only escalated and was not rectified by the landlord until the lower suite tenants were finally evicted by the landlord in April 2014.

According to the tenant, they and their child were subjected to threats, racist commentary, high volume music, foul language and deprivation of heat and hydro by the lower tenants. The tenant testified that they were also forced to listen to loud violent arguments between the two occupants below including yelling, cursing, ranting and possible domestic abuse at all hours of the day or night.

The tenant testified that during the tenancy they felt it necessary to call the police seeking intervention on 6 separate occasions. The tenant included copies of the police reports documenting these occurrences.

The tenant's witness stated that, as a neighbor, they were also bothered by disturbances similar to those described by the tenant including excessive noise, confrontations and other volatile conduct by the lower suite renters. The witness stated that they had also sought police intervention on more than one occasion.

The tenants testified that, although they did not contact the landlord every single time the lower suite renters bothered them, the harassment from the lower occupants was unrelenting and the family lived in a very tense volatile environment for the entire time they shared the building with the lower suite renters. The tenant testified that in the last few months they feared for their family's safety as the situation continued to deteriorate. They finally felt it necessary to vacate the unit until the other renters were finally gone.

Submitted into evidence by the tenants were copies of communications, witness statements, receipts, a chronology, video recordings and copies of police reports.

The tenant feels that the landlord failed to adequately protect their right to quiet enjoyment under the Act and tenancy agreement. The tenant is claiming compensation including a retro-active rent abatement of 70% of the rent they paid between March 2013 to March 2014. The tenants are also claiming the cost they incurred for alternate accommodations being that they were forced to leave temporarily for their own safety.

The landlord stated that they always responded as quickly as possible to the tenant's complaints about the conduct of the occupants in the lower suite. The landlord pointed out that they had also received similar complaints from the lower occupants about the conduct of upper tenants. According to the landlord, they investigated the situation more than once and each time their efforts appeared to sufficiently placate the parties.

The landlord pointed out that, after things were quiet for a time, they then received more complaints in April 2013 and after speaking to both parties, it again appeared that the problems were resolved. The landlord pointed out that they did not hear anything for approximately 3 months and this led them to believe that matters had stabilized.

However they then received more complaints from both the upper and lower tenants in July 2013, at which time the landlord intervened once again. The landlord submitted a copy of a written complaint received from the lower renters with details about the alleged conduct of the tenants upstairs. *In addition, there were several communications from the upper tenants to the landlord complaining about the lower renters.

The landlord testified that they were advised by police that the best course of action was to encourage the upper and lower tenants to try to "work things out" between themselves. The landlord stated that they hoped the parties would choose to interact in a more mature and reasonable manner.

The landlord stated that it appeared that their involvement had the effect of bringing some peace for a time and they were optimistic that the parties would get along. However, in October 2013 the disputes between the tenants flared up again.

The landlord testified that they had gone so far as to caution both parties in writing, warning them that the landlord was fully prepared to pursue eviction proceedings against one or both tenants if the problems continued.

The landlord stated that no further issues arose as far as they knew until they were approached by the upper tenants in January 2014 while they were out of town.

The landlord testified that, as soon as they got back and looked into the situation further, they determined that the renters in the lower suite must be evicted. The landlord pointed out that they then took decisive action to terminate this tenancy. The landlord successfully received an Order of Possession against the lower suite renters through dispute resolution on March 25, 2014.

The landlord acknowledged that, prior to the previous hearing, once the lower suite renters had become aware that their tenancy was going to be terminated by the landlord, these renters did subject the upper tenants to a course of vexatious conduct during that brief period.

The landlord stated that they did not believe that the tenants in the upper unit were ever in significant danger, to the extent that it would justify vacating the rental unit to stay in a motel. The landlord does not accept that reimbursement by the landlord for the tenant's cost of staying in a motel is warranted.

The landlord's position is that the record confirms they dealt with the disputes between the upper and lower tenants in an appropriate manner, intervening when called upon as necessary. The landlord is of the opinion that both the upper and lower tenants shared responsibility for the continued problems.

The landlord pointed out that, after a thorough assessment of the situation, they did do what was necessary by terminating the tenancy of the lower suite tenants once it was established that these tenants were violating the Act.

Analysis - Monetary Compensation

The tenant is requesting a retro-active rent abatement due to the //

Section 7 of the Act states that if a party does not comply with the Act, or the terms of the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and the corresponding loss.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states 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.

I find that this landlord was in a position where they were required to balance the rights of both parties and this made it essential that they determine which tenant is more to blame for instigating the disturbances and whether this would justify a termination of tenancy under the circumstances. I find this question to be very difficult to answer because both sets of tenants were apparently lodging complaints against one another. Moreover, I find that a landlord's options are somewhat limited because, in order to obtain an Order of Possession, they must be prepared to prove on a balance of probabilities that the party in question created a level of disturbance that was unreasonable.

Given the above, I find that the landlord cannot be faulted for proceeding cautiously under the Act. I accept that the landlord did take action as soon as it was sufficiently determined that the renters in the lower suite were primarily at fault for repeatedly disturbing the upper tenants. I find that the landlord complied with their obligations under section 28 of the Act.

Although I have found that the landlord was *not* in violation of the Act, I find that, with respect to the *tenancy agreement* the landlord's *contractual* obligations were compromised. I find that this landlord and tenant had contracted in good faith for the landlord to provide a rental unit that was comfortable and liveable, including an expectation of quiet enjoyment of the suite, and in exchange the tenant would pay the rent agreed-upon each month of the tenancy.

The landlord's argument that both the upper and lower suite tenants contributed to the conflict situation may have some merit. However, regardless of what dynamics existed, I find the evidence clearly establishes that the applicant tenants did endure intermittent and unpredictable disturbances by the renters in the lower suite that tangibly affected the value of the subject tenancy.

The fact that this adverse situation developed beyond the control of the landlord to prevent, or immediately rectify, does not function to lessen its adverse impact on the value of this tenancy. I find that the tenants paid full rent for a unit with a basic expectation of quiet enjoyment. I find that they did not receive quiet enjoyment, particularly after the landlord began to initiate steps to terminate the tenancy of the lower suite occupants.

Given that the tenant suffered a significant loss of value to the tenancy and their quality of life over a one-year period, I find that some compensation is warranted. Accordingly I

find that the tenant is entitled to a rent abatement of \$350.00 per month for a 12-month period from March 1, 2013 to February 28, 2014 totaling \$4,200.00

Based on the evidence, I further find that the situation worsened, once the renters in the lower suite became aware that their tenancy was being terminated by the landlord.

I accept that the tenant genuinely feared for their safety to the extent that they felt it necessary to stay in alternate accommodation until the lower renters were gone, particularly as they had a distraught child to consider.

Therefore I find that the tenant is also entitled to be reimbursed for the cost of their stay in the motel in the amount of \$2,120.62.

Based on the testimony and evidence discussed above, I find that the tenant is entitled to total compensation of \$6,370.62, comprised of \$4,200.00 for loss of value to the tenancy, \$2,120.62 for motel expenses and the \$50.00 cost of the application. I hereby grant the tenant a monetary order in the amount of \$6,370.62.

This order must be served on the landlord and may be enforced through BC Small Claims Court if necessary.

I order that the tenant's security deposit must be dealt with in accordance with section 38 of the Act.

Conclusion

The tenant is partly successful in the application and is granted a monetary order for devalued tenancy and the cost of alternate accommodation.

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: May 13, 2014

Residential Tenancy Branch

