



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on December 31, 2013. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testifies that this tenancy started on January 01, 2011. Rent for this unit started at \$1,600.00 per month and was increased to \$1668.80 in August 2012 and to \$1,700.00 in August 2013.

The tenant testifies that on March 08, 2013 the tenant returned to her unit at lunch time and found water coming into her unit from the unit above. The tenant informed the landlord and the caretaker for the building. The caretaker and a member of the Strata Council came to the tenants unit to look at the damage. The Strata Council sent in a restoration company on March 11, 2013. The tenant testifies that the landlord would not come to the tenant's unit to organise the repairs despite requests made by the tenant.

The tenant testifies that she assisted the restoration company by allowing them access to her unit. The restoration company brought in large dehumidifiers and fans to dry the unit. The tenant testifies that her unit is very small and these machines were large and cumbersome. The tenant testifies that she repeatedly asked the landlord to take over the management of the repairs however the landlord refused to do so and informed the tenant that this was the tenants job to organise everything. The landlord even gave out the tenants personal details such as phone number and email to the restoration company. The restoration company would then call the tenant or arrive at her door without prior notice to complete the repairs.

The tenant testifies that the dehumidifiers were running constantly and this made it impossible to sleep. The tenant testifies that the level of stress, the repair work and the noise from the machines affected the tenant's ability to work and sleep. Often workers would arrive at the tenants unit and would not identify themselves and this left the tenant feeling uncomfortable as she is a women living alone. The tenant requested the restoration company to provide a schedule for the repairs with work being completed and times and dates. However the restoration company refused to do this and then became aggressive towards the tenant. The tenant refers to a threatening email from

the landlord in which the landlord has indicated that if the tenant does not co operate the tenant will be held responsible for any damages. The tenant testifies that the restoration company entered the tenants unit on 11 occasions over a three month period and of these, official notice was only provided on two occasions.

The tenant testifies that the landlord did not protect the tenant's right to quiet enjoyment of the rental unit. The tenant accepts that the first call out was an emergency to determine the extent of the damage but each subsequent visit was for remedial work and was not an emergency. This whole situation was made worse due to the landlord refusal to organise the repair work and to protect the tenant's quiet enjoyment. The tenant testifies that this continued until June 07, 2013. The tenant seeks compensation from the landlord equivalent to one and a half's month's rent of \$2,503.20 due to a loss of quiet enjoyment; intimidation by the landlord; for having to live with the constant noise from the machines in the unit; the loss of part of the unit while repairs were made; and for the times taken during the day when the tenant had to leave work for a few hours to attend at the unit while repairs were taking place. This resulted in the tenant having to put in extra time at work and to bring work home to ensure her workload did not fall behind.

The tenant testifies that she also had to take three full days off of work which were unpaid on March 11, 12 and 13. The tenant refers to the letter from her company which indicates the days taken as unpaid leave and the tenant's daily rate of \$275.00. The tenant seeks to recover this loss of earning from the landlord to an amount of \$825.00.

The tenant also seeks a nominal amount of \$1.00 in compensation for the insults and stress suffered by the tenant from the landlord, the Strata Council and the restoration company.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been sent a Notice by registered mail; A Respondent cannot avoid service by none collection of a registered mail letter and is still considered to have been served whether or not they picked up the registered mail. Therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants undisputed documentary evidence and sworn testimony before me.

With regard to the tenants claim for compensation for a loss of quiet enjoyment of her rental unit; I refer the parties to s.6 of the Residential Tenancy Policy Guidelines which deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. 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."

The Residential Tenancy Act (the Legislation) establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased.

A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises; however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Having considered the undisputed testimony and documentary evidence before me I find that the tenant did suffer a flood in her unit from the unit upstairs. This occurred through no fault of the landlord or the tenant. However what does concern me is the landlord's failure to organise the repair work insisting instead that this was the tenant's responsibility. I find the tenant was forced to take over this organisation and suffered a loss of quiet enjoyment of her rental unit with the frequent coming and going of the restoration workers without proper notice of entry to the tenant. The landlord has the responsibility to organise any remedial work that is required in a unit and only the first entry can be described as an emergency repair where no notice period is required.

Furthermore I find the tone of the emails, sent to the tenant, are intimidating and the information is inaccurate concerning the tenant's responsibility. It is not a tenant's reasonability to ensure this work is carried out or to liaise with the restoration company. I find the tenant asked the restoration company for a work schedule for the work required and the dates and times they would be coming into the unit. This was refused by the restoration company and should have been the responsibility of the landlord. The

landlord should then have provided written notice to the tenant with the date and time of entry and the reason for entry with a minimum of 24 hours notice.

A landlord does have the right to make repairs but these must be conducted with the minimum of inconvenience to the tenant. I find the tenant lost the use of some areas of her unit and had to live with the noise from the dehumidifiers for some time both day and night. I also find the tenant had to take time away from her work to attend at the unit to supervise repairs or to be there to let the restoration company gain access to the unit. This resulted in the tenant having to work extra hours in her office and at home. I further find a landlord is responsible to protect the tenant from any interference from an outside source which in this case was the restoration company's intimidation and some threats towards the tenant from a member of the Strata Council. Had the landlord taken over the organisation of the repairs it is likely these types of vexatious comments and intimidating behaviour could have been avoided.

Consequently, I find the tenants claim for compensation for a loss of quiet enjoyment of her rental unit for three months is upheld. I therefore award the tenant compensation of **\$2,503.20** and a further nominal award of **\$1.00** for stress and suffering.

With regard to the tenants claim for loss of earnings for having to take three days off work to deal with this matter; I find as this was the landlords responsibility and not the tenants; had the landlord issued proper notice of entry into the tenant's unit then the tenant may not have had to lose time from work. Consequently, I uphold the tenants claim to recover the amount of **\$825.00** from the landlord for a loss of earnings for three days in March.

Conclusion

The tenant's application is upheld. The tenant is entitled to recover the amount of **\$3,329.20** from the landlord in compensation pursuant to s. 67 of the Act. The tenant is

also entitled to recover a further sum of **\$50.00** for the filing fee pursuant to s. 72(1) of the *Act*.

The tenant is entitled to deduct the amount of **\$3,379.20** from her rent payments due to the landlord. I HEREBY ORDER that the tenant reduces her rent payments by **\$1,000.00** per month for the next three months and by **\$379.20** for the fourth month after.

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: April 22, 2014

Residential Tenancy Branch

