



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

On May 14, 2014 the Tenant documents to the Residential Tenancy Branch, copies of which were placed in the Landlord's mailbox on May 14, 2014. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit and to a utilities refund?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on September 15, 2012 and that it ended on April 30, 2014. The parties agree that the Tenant agreed to pay monthly rent of \$1,700.00 plus utility costs for the residential complex.

The Landlord and the Tenant agree that after this tenancy began the Landlord rented a lower suite to a third party and that the new occupant began paying ¼ of the utility costs. The Tenant stated that the new occupant stopped paying her portion of the utilities in December of 2013 and she contends she is owed \$256.07. After discussing the bills submitted as evidence, the Agent for the Landlord agreed to compensate the Tenant in this amount.

The Tenant stated that when they rented the unit they were told the lower suite would remain vacant and would be used only for storage. She said they were told they would be the only occupants of the residential complex. The Agent for the Landlord stated that she did not represent the Landlord at the start of this tenancy and she does not know whether the Tenant was told they would be the only occupants of the residential complex.

The Tenant stated that an occupant moved into the lower suite at the end of June of 2013. The Agent for the Landlord stated that she did not represent the Landlord in June of 2013 and she does not know when a third party moved into the lower suite. The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in the amount of \$5,100.00, in large part because of disturbances caused by the occupant in the lower suite.

The Tenant stated that the occupant of the lower suite disturbed their enjoyment of the residential complex by:

- Regularly leaving garbage, such as beer cans, cigarette butts, and general debris) in the yard which had to be removed by the Tenant
- Smoking inside the lower suite, which the Tenant could smell in the rental unit
- The occupant of the lower suite had two small, aggressive dogs, who bit a Tenant or a guest of the Tenant on at least three occasions
- The occupants of the lower suite's dog(s) fought with the Tenant's dog(s) on at least four occasions
- The Tenant was disturbed by the occupant of the lower unit and/or her guests every two or three weeks, sometime until the early morning hours. These disturbances related to "partying", loud conversations, and arguments.

The Tenant stated that the aforementioned concerns were discussed with a previous representative for the Landlord on several occasions and that they were discussed with the Agent for the Landlord after she began working for the Landlord in December of 2013.

The Agent for the Landlord stated that when she began working for the Landlord she understood there were problems with the occupant of the lower suite. She stated that the Tenant did express the aforementioned concerns to her and that she discussed those concerns with the occupant of the lower suite. She stated that the occupant of the lower suite was eventually evicted, in part, because of these issues.

The Tenant stated that after the occupant of the lower suite was served with an eviction notice they began experiencing periodic electrical problems. She stated that it was subsequently determined that the occupant was turning off breakers in the electrical panel.

The Landlord and the Tenant agree that the occupant of the lower suite moved out of the suite on April 02, 2014.

The Landlord and the Tenant agree that there was a sewer blockage on February 19, 2014, which was not repaired until February 22, 2014. The Tenant stated that she was not able to shower during this time, although the rest of the plumbing fixtures could be used. The Landlord and the Tenant agree that the furnace stopped working on February 28, 2014 and it was not repaired until March 03, 2014.

Analysis:

As the Agent for the Landlord agreed to pay \$256.07 in compensation for utilities, I find that the Landlord must pay this amount to the Tenant.

On the basis of the undisputed evidence, I find that when this tenancy began the Tenant was told the lower suite would be used for storage and would not be occupied. I therefore find that it was reasonable for the Tenant to expect that she did not have to share this residential complex with a third party. On the basis of the undisputed evidence I find that the lower suite was occupied between July 01, 2013 and April 02, 2014.

On the basis of the undisputed evidence, I find that the occupant of the lower suite disturbed the Tenant by making noise, smoking, leaving garbage in the yard, and tampering with the electrical panel. In addition to these direct disturbances, I find that sharing common areas, such as a yard, and sharing walls/ceiling generally reduces the value of a tenancy. It is commonly accepted that living in a shared residential complex is less desirable than living in a "single family dwelling". I find this to be particularly true when both parties have pets that do not interact well.

I find that the Landlord's decision to rent the lower suite did reduce the value of this tenancy and that the Tenant is, therefore, entitled to compensation for the resulting loss of quiet enjoyment of their rental unit. Determining compensation for loss of quiet enjoyment of the rental unit is highly subjective and difficult to quantify. In these circumstances, I find that compensation of \$200.00 per month for the loss of quiet enjoyment resulting from the lower unit being occupied is reasonable. I therefore award the Tenant compensation, in the amount of \$1,800.00, for the period between July 01, 2013 and May 31, 2014.

On the basis of the undisputed evidence, I find that the Tenant was unable to use the shower in the rental unit for 3 days in February of 2014 and the furnace stopped working for 4 days in February/March of 2014. Although I find that the Landlord took reasonable steps to repair these problems, I find that the problems did interfere, to some degree, with the Tenant's quiet enjoyment of the rental unit. I therefore granted the Tenant compensation of \$100.00 for these inconveniences.

I find that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of \$2,256.07, which is comprised of \$1,900.00 for loss of quiet enjoyment of the rental unit; \$256.07 for utility costs; and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: May 25, 2014

Residential Tenancy Branch

