# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Affordable Housing Society
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover their RTB filing fee.

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

Issue(s) to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The tenancy agreement signed by the parties on May 14, 2007 indicates the tenancy started on June 1, 2007. The tenants gave evidence that they moved to a different unit in the housing complex in October 2010. The tenants moved out of the second rental unit in February 2014.

The tenants claim that, over the course of the six and a half years they lived in the housing complex, their right to quiet enjoyment was breached by the landlord. The tenants seek compensation of $25,000.00 for the alleged breaches.

A written statement provided by the tenants [the "Tenants' Written Statement"] prior to the hearing reads, in part:

> "Substantial interference to our life on Landlord's behalf has given sufficient cause for our family to stop agreement and leave in February, looking for other

> opportunities. Our family felt unwelcomed, being under harassment, on-going persecution and intimidation in this property.
>
> We belief that the following rights of our family as Tenants have been breached by [landlord] employees under BC Residential Tenancy ACT:
>
> - Reasonable privacy
> - Freedom from unreasonable disturbances
> - Use of common areas for reasonable and lawful purposes, free from significant interferences."

The Tenants' Written Statement indicates the following areas of concern:

1. Supervision of the tenants' children
2. Slow repair to unsafe balcony of second rental unit
3. Refusal to install new carpet in second rental unit
4. Landlord entry to rental unit without notice
5. Landlord sent letters regarding the supervision of the tenants' children
6. Landlord sent letter regarding tenant repairing vehicle in parking stall
7. Landlord sent letter regarding where tenant's vehicle may be parked
8. Noise and smoking from the resident managers' unit
9. Overall cleanliness of the complex, especially the playground

*Supervision of tenants' children* – the Tenants' Written Statement indicates the tenants are concerned about landlord staff telling their children to stop bike riding, skateboarding, or using a "rib stick", and to stop chalk drawing.

At the hearing, the tenants gave evidence that the resident managers told the tenants that the tenants' children were not being properly supervised. The tenants say they were concerned that the resident managers took photographs of their children. The tenants say they did not give permission for their children to be photographed and it is against the law.

The tenants gave evidence they felt harassed and persecuted because the landlord sent them a letter dated August 27, 2013. The letter was put in evidence and reads in part:

> "Please be advised we continue to receive complaints about your children playing on the complex without proper supervision. The Resident Managers have spoken to you verbally on many occasions in the past about this and how dangerous it is for the children and how it is in contravention to our rules &

> regulations. They have been running around throwing pebbles from the playground, running into car pathways and may be in danger of getting hit by vehicles and screaming excessively loud.
>
> You had received a notice from the Resident Managers on August 12th, 19th, and 22nd about your unsupervised children. It is clear that you will not abide by the rules of the complex as it has been ongoing issue for a long time. Therefore, I have attached a Breach Notice for you. If there are any further violations of the rules, you will be issued a Notice to End your Tenancy here at Venturi Park."

The tenants gave evidence that, prior to the receipt of this letter, the resident managers had not spoken to them about their children. The tenants gave evidence that they always supervised their children properly. They say they considered the housing complex a safe property for their children.

The tenants also say they did not receive a copy of the housing complex rules at the start of their tenancy, and so those rules did not constitute part of their tenancy agreement.

Asked whether their children were treated differently from other residents' children, the tenants gave evidence that they did not know.

The landlord gave evidence that they have standard playground rules and these would have been provided to the tenants in 2007 at the start of their tenancy. The landlord says they have had such rules since housing complex was built. The landlord gave evidence that the landlord has a difference of opinion with the tenants regarding how children should be supervised. The landlord's evidence is that the tenants were often inside their rental unit about 30 yards away from the area their children were playing.

The landlord gave evidence that the landlord was concerned about the safety of the tenants' children and also about legal liability. The landlord's evidence is that the rules applied to all children of the housing complex. The landlord provided copies of letters from two tenants who have received letters from the resident managers, including one tenant who had received a letter regarding the supervision of her children. The letters indicate the other tenants do not consider the landlord's letters to be unreasonable or to have a harassing tone.

*Repair to unsafe balcony* – The tenants gave evidence that a Plexiglas panel was not installed on their balcony for several years and this caused the balcony to be unsafe for use by their children.

The landlord gave evidence that a Plexiglas panel had to be replaced at the time the tenants moved in to the second rental unit. The landlord's evidence is that they supplied a Plexiglas panel but the male tenant said he would install it himself.

The tenants gave evidence that the Plexiglas panel supplied by the landlord was not usable and they did not receive a replacement panel for several years.

*Refusal to install new carpet* – The tenants gave evidence that they requested replacement carpet in their rental unit many times and were refused. The tenants gave evidence that their son has an allergy to dust. The tenants provided a copy of a letter from the landlord dated February 1, 2013 which reads in part: "Upon examination, your carpets are up to standard at this time and could stand a good professional steam cleaning, and an appropriate time to dry properly, to bring them back fresh. I could find no de-lamination of backing on the stairs or in traffic areas. I can schedule a re-stretch once the carpets have been professionally cleaned."

The landlords gave evidence that their policy is to not replace carpeting before it is 10 years old, and the tenants' carpeting was not that old. The landlord's evidence is that they were not advised of the tenants' son's allergy.

*Entry to rental unit without notice* – The tenants gave evidence that the landlord entered their rental unit or property on two occasions without notice. The tenants say that their son told them the landlord entered the rental unit in mid-July 2013 without notice, and also repaired their back fence in the fall of 2013 without notice.

The landlord denies that they ever entered the rental unit without proper notice. The landlord provided copies of several notices that were issued to the tenants advising that the landlord would enter the rental unit on particular days and times. The landlord agrees they repaired the fence around the backyard of the rental unit but states the repair was conducted from outside the backyard.

*Letter regarding tenant car repair* – The tenants received a letter from the landlord dated December 19, 2013 which reads in part: "On December 2, 2013 the Resident Manager, [Name] saw you in your parking stall, your Volkswagen Passat hoisted up on car jacks performing a full brake repair with your son, which also caused oil and brake fluid to be splashed around the parking stall. Please find attached a cleaning form letter to this effect." The tenants gave evidence that the male tenant only performed minor maintenance on their vehicle and it was water, not oil, spilled on the parking space.

The landlord gave evidence that it is against their regulations for residents to repair cars in the parking stalls. The landlord's position is that it was oil spilled in the parking stall.

*Letter regarding parking of tenants' vehicle* – The tenants gave evidence they submitted a form to park a vehicle on the property, then they received a letter from the landlord dated January 6, 2014 that is not accurate. The tenants say the resident managers gave misinterpreted information to the property manager. The letter reads:

> "Please be advised that [landlord] management has never agreed to have you park your above named vehicle on our property. You have filled out a blank parking agreement form by yourself and placed in our mailbox along with a note. This does not constitute agreement on our part. Both the relief manager [name] and the weekend relief manager [name] did not authorize nor agree to your parking an unlicensed vehicle. When the weekend relief manager came to advise you that you cannot park your vehicle in the visitor's stall, you simply waived her away and told her that [relief manager] had said it was ok which was a lie."

The landlord gave evidence that the tenants intended to have an uninsured vehicle on the property and they do not allow this.

*Noise and smoking from the resident manager's unit* – The tenants gave evidence that there was loud drumming every evening from the resident managers' unit. Asked if they complained about the noise, the tenants said they had not.

The landlord gave evidence that they had not received any noise complaints about the resident managers from the tenants in this application or any other tenants. The landlord said the resident managers quit smoking about a year and a half ago; the resident managers' office is about 30 yards from the tenants' rental unit and the resident managers' home is about 200 – 300 yards away.

*Cleanliness of the complex* – The tenants gave evidence that the complex is not kept adequately clean, especially the playground.

The landlord gave evidence that their property is kept very clean and they have had no complaints about cleanliness from any other tenants.

Asked whether they moved out voluntarily, the tenants gave evidence that they were pushed out by harassment, they did not feel welcomed, and they felt persecuted.

Analysis

A tenant's right to quiet enjoyment is set out in Section 28 of the Act, which reads:

> "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;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference."

Residential Tenancy Guideline 6 "Right to Quiet Enjoyment" ["Guideline 6"] says "A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show **a course of repeated or persistent threatening or intimidating behaviour** [emphasis added]. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants."

Guideline 6 also says "Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

I find that the tenants have not proven, on a balance of probabilities, that the landlord breached their right to quiet enjoyment. The allegations against the landlord, even if accurate, do not constitute "a course of repeated or persistent threatening or intimidating behaviour" or "harassment" within the meaning of Guideline 6 and Section 28.

I find that the tenants and landlord had a genuine and longstanding difference of opinion about the adequacy of the supervision of the tenants' children. The landlord's repeated attempts to induce the tenants to follow the playground rules regarding supervision of their children do not constitute harassment or other ill-treatment of the tenants.

Similarly, the other issues raised by the tenants are legitimate differences that may arise between landlords and tenants over the course of a tenancy. Disputes concerning whether new carpet should be installed or the appropriate use of parking spaces on the property are commonplace in tenancies. The evidence presented by the tenant does

not indicate that the landlord's decisions or actions toward the tenants were unreasonable. Similarly, the tenants did not provide any evidence to indicate that they were treated differently than any other tenants.

For these reasons, the tenants' application is dismissed.

Conclusion

The tenants' application is dismissed.

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 08, 2014

Residential Tenancy Branch