



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, DRI, LRE, O, FF

Introduction

This was an application for a monetary Order as compensation for a breach of the covenant of quiet enjoyment, compensation pursuant to section 49 of the Act, moving expenses and the filing fee. Both parties attended the hearing.

Issue(s) to be Decided

Is the applicant entitled to any compensation?

Background and Evidence

The undisputed evidence was that this tenancy began on March 23, 2013 and ended on July 1, 2014 when the tenant moved out. The monthly rent was \$ 650.00 and the security deposit of \$ 325.00 was returned to the tenant.

The tenant's monetary claim is: \$ 5,100.00 for harassment, \$ 200.00 moving expenses, \$ 650.00 as compensation pursuant to section 49 of the Act, \$ 800.00 for lost wages and his filing fee. The applicant abandoned all other claims.

Tenant's' evidence-

The tenant testified that he and the landlord are employed by the same company. The tenant is the IT person at the company. The tenant submitted that beginning in June of 2013 the landlord would enter his suite without knocking. On June 23, 2013 he entered without prior notice allegedly because he was worried as the tenant had left his lights on 24 hours a day and was not responding to calls or texts. The tenant texted the landlord warning him not to enter again without prior notice as he has a lot of confidential documents in his suite. The tenant's evidence was that nothing further occurred until November or December 2013 when the landlord allegedly entered the suite without

prior consent or notice. On or about May 3, and onward the tenant testified that the landlord advised him by text that he rent would be going up \$30.00 per month. There was an exchange of texts indicating that the tenant refused the increase and would move if the landlord wanted him to. The landlord replied by texts that he did not want him to move and requested a meeting. The tenant testified that ultimately the landlord backed away from the request after the tenant advised him the landlord was required to give 3 months notice of a rent increase.

The tenant testified that the landlord allegedly entered his suite around May 11, 2014 and took pictures of the interiors of his bedroom and bathroom apparently shot from outside looking in. He texted the landlord requesting the destruction of the pictures which the landlord replied that "they were only exterior pictures." The tenant testified that he was shown these photos by the landlord's wife in a taunting manner. The tenant testified that subsequent to this event the landlord continued to harass him by turning off the power for an hour, turning down the water temperature in the hot water tank for a month and approaching him and his colleagues at work. The tenant received a letter from the landlord dated June 1, 2014 in which he requested that the tenant vacate the suite by the end of June or July as it was needed for a family function. The tenant left the unit by July 1, 2014 because of the notice and of the harassment. He is claiming for one month's rent pursuant to section 49 of the Act, \$ 200.00 moving expenses, \$ 800.00 for loss of wages as well as \$ 5,100.00 for loss of quiet enjoyment as a result of the campaign by the landlord to harass him.

Landlord's evidence-

In response, the landlord testified that at the beginning of the tenancy he noticed that the tenant's lights were on 24 hours a day and in addition to being suspicious, was worried about his hydro bill. Also one of his neighbours alleged that he had his sleep disrupted by the lights. However, he testified that only entered the unit on June 23, 2013 because he was worried about the tenant's health, as the lights were on 24 hours a day and the tenant was not responding to calls or texts. He was told not to enter again without notice or permission so he never did. He denied ever taking any pictures of the tenant's suite from outside. He denied turning the power off, water temperature down or bothering him at work. He testified that he suggested a rent increase because of the increase in his electric utilities occasioned by the tenant leaving his lights on. He admitted to giving him the letter of June 1, 2014 requesting he leave because he had guests coming to a wedding who needed a place to stay. The landlord explained that a family member was going to stay in the unit. The landlord thought this was a legal notice. The unit is still vacant.

Analysis

Section 52 of the Act provides that when a landlord wishes to end a tenancy, he must provide the tenant with a notice in the approved form. This notice outlines the rights and responsibilities of both parties. I accept that neither party was aware that the letter given by the landlord was not a legal notice. However, the letter had the effect desired by the landlord in that it made the tenant believe that he was compelled to move out of the rental unit.

I find that because the tenant acted on the illegal notice and vacated the unit as desired by the landlord, he is entitled to the compensation to which he would have been entitled had the landlord followed the law and served on the tenant what is known as a section 49 notice.

Section 51 of the Act provides as follows:

51. Tenant's compensation: section 49 notice

51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

51(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

51(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that section, the landlord must refund that amount.

51(2) In addition to the amount payable under subsection (1), if

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

51(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant has not made a claim for compensation under section 51(2), so the only award I can make on this application is an award under section 51(1). I find that the tenant is entitled to recover from the landlord \$650.00, which is the equivalent of one month's rent.

The tenant is also making a claim for compensation as a result of a breach of his covenant of quiet enjoyment. Section 6 of the Policy Guideline states as follows:

The Residential Tenancy Act and Manufactured Home Park Tenancy Act² (the Legislation) establish 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**
- 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. **Such interference might include serious examples of:**

· persecution and intimidation; · refusing the tenant access to parts of the rental premises; · preventing the tenant from having guests without cause; · intentionally removing or restricting services, or failing to pay bills so that services are cut off; · forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, · allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

- Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

- **Harassment**

- 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".³ As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

- **Claim for damages**

- In determining the amount by which the **value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been** unable to use the premises, and the length of time over which the situation has existed.

Base upon the oral and written relevant evidence and a balance of probabilities, I find as follows: I find that the tenant gave his evidence in a very straightforward way. Over all, I accept his evidence and prefer it over that of the landlord. I find the landlord's explanation that he entered the tenant's suite because of his concern for his well-being defies common sense and therefore I reject it as not credible. I find that the landlord had entered his suite illegally on numerous occasions. It was clear from all the evidence that the landlord was motivated by his intention to reduce the hydro bill and therefore to stop the tenant from leaving his lights on. This was further demonstrated by his desire to raise the rent because of the alleged rising electric bills although he was unsuccessful in that regard. The landlord flatly denied taking of pictures in his testimony but in his text message admitted to taking pictures "only of the outside of the house." The tenant specifically alleged this is what the landlord did: take pictures of his suite from the outside in. I therefore accept the tenant's evidence that the landlord took pictures from outside looking into his suite. I find that this conduct: the picture taking and unauthorized entries constituted harassment, breaches of his privacy and together equal a breach of his covenant of quiet enjoyment.

However I find that the tenant failed to demonstrate to what degree the harassment or breach of his quiet enjoyment made his residence less habitable. It's clear there was some disturbance which ultimately motivated his acceptance of the landlord's notice to vacate. But that disturbance was not proportional to the amount of compensation claimed. Accordingly I award the applicant the total sum of \$ 500.00 for the breach of covenant of quiet enjoyment for all of the landlord's transgressions of illegal entry and breach of his privacy evidenced by the taking of pictures. I have dismissed all other claims made by the tenant such as loss of wages and moving expenses. I have also dismissed the claim for the destruction of the photos as I do not have any means of enforcing such an remedy.

I have awarded the tenant his filing fee amounting to \$ 50.00. Pursuant to Section 67 of the Act, I have provided the tenant with a monetary order for \$ 1,200.00. This order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

Conclusion

I have granted the tenant a monetary award of \$1,200.00, comprised of \$ 650.00 for compensation pursuant to section 49, \$ 500.00 for a devaluation of the tenancy, and recovery of the filing fee of \$50.00. I have dismissed all other claims made by the applicant.

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: August 05, 2014

Residential Tenancy Branch

