



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nordon Villa
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located within a 70 year old building where there are a total of 35 separate units. Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 01, 2012. Monthly rent of \$950.00 is due and payable in advance on the first day of each month, and a security deposit of \$475.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

In response to applications by both parties, two previous hearings have been held in disputes concerning this tenancy:

Files # + #. Hearing dates: February 24 & April 17, 2014.
Decision dated April 17, 2014.

Pursuant to the decision, a 1 month notice to end tenancy for cause was set aside, and a monetary order was issued in favour of the tenants with respect to recovery of the filing fee.

Files # + #. Hearing date: June 10, 2014.
Decision dated June 10, 2014.

Pursuant to the decision, two 1 month notices to end tenancy for cause were set aside, and the tenants were authorized to recover their \$100.00 filing fee by way of withholding that amount from the next regular payment of monthly rent.

In the decision, the Arbitrator noted that the tenants' application for dispute resolution included an application for "compensation as a result of the landlord's breach of their covenant of quiet enjoyment by allegedly harassing them." That aspect of their application was dismissed with leave to reapply.

Following from the decision of June 10, 2014, the tenants filed the application which is currently before me on July 03, 2014. The tenants seek compensation in the total amount of \$5,700.00, which is calculated on the basis of 6 x the monthly rent of \$950.00. The tenants allege a breach of their right to quiet enjoyment, comprised in part of "a pattern of systemic and unrelenting harassment and unconscionable conduct towards [the tenants], thereby causing extreme stress and anxiety for [the tenants]." Various aspects of the tenants' concerns are set out in the decision of June 10, 2014.

During the present hearing there was some limited exploration of a potential settlement, however, a mutually agreeable resolution was not achieved.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. However, as noted above, discussion between the parties during the hearing did not lead to a settlement.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 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.

Residential Tenancy Policy Guideline # 6 speaks to the "Right to Quiet Enjoyment," and provides, in part, as follows:

- **Basis for a finding of breach of quiet enjoyment**

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. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- 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.” 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.

A considerable amount of documentary evidence was submitted by both parties. As earlier noted, the decision dated June 10, 2014 sets out various aspects of the tenants’ concerns in support of their allegation of a breach of the right to quiet enjoyment and / or harassment. Interactions between the tenants and the landlord appear to occur principally between tenant “PVT” and landlord’s agent “BAL.” In summary, the parties have had a number of confrontations related variously, amongst other things, to payment of rent, the location where the tenant parked his vehicle, and the uninsured status of the tenant’s vehicle. The decision also makes note of the landlord’s claim that the tenant is “generally verbally abusive and threatening...”

Documentary evidence submitted by the tenants includes, but is not limited to, 3 separate affidavits which speak to the tenants’ concerns arising from dealings with the landlord. Much of the content in these affidavits revolves around difficulties / delays associated with moving into the unit when tenancy began approximately 2 years ago. As well, there are character reference letters for tenant “PVT.” In their submission the tenants refer to what they term “Harassment Note[s],” “Creepy Pictures,” and a “Creepy and Irrational Package,” and previous notices to end tenancy issued by the landlord, in addition to medical attention for stress sought by tenant “PVT.”

I have carefully considered all of the documentation submitted by both parties. In summary, I find that the tenants have failed to meet the burden of proving that there has been a breach of their right to quiet enjoyment and / or harassment on the part of the landlord. In the result, the tenants’ application for related compensation is dismissed, as is their application for issuance of an order which instructs the landlord to comply with the Act, Regulation or tenancy agreement.

While the tenants claim there have been numerous incidents / interactions with the landlord which they consider to be difficult, the same claim has been made by the landlord. While these occasions have often been upsetting to one or other of the parties, or both, I do not consider that within the approximate 2 year period of this tenancy they can be considered to be “frequent and ongoing interference by the landlord.” Additionally, I do not consider the previous issuance of notices to end tenancy to be harassment, despite the tenants’ successful application to have them set

aside. Further, I am unable to conclude that there has been a pattern of persecution and / or intimidation on the part of the landlord against the tenants.

Following from all of the above, going forward there may be merit in the owner / landlord's designation of a party other than "BAL" to represent him in dealings with these particular tenants. Unfortunately, it would appear that difficulties encountered between tenant "PVT" and landlord's agent "BAL" border on becoming personal, and this may preclude the prospect of a healthier landlord – tenant relationship for as long as this tenancy continues.

Conclusion

The tenants' application is hereby 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: September 09, 2014

Residential Tenancy Branch