Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 689352 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNL, MNDC, OLC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order regarding a disputed additional rent increase pursuant to section 43;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This application was filed 6 January 2015.

The landlords did not attend this hearing, although I waited until 1011 in order to enable the landlords to connect with this teleconference hearing scheduled for 0930. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlords with the dispute resolution package on 9 January 2015 by registered mail. The tenant provided me with Canada Post tracking numbers that showed the same. On the basis of this evidence, I am satisfied that the landlords were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act on 14 January 2015, five days after this registered mailing.

Preliminary Issue – Admission of Late Evidence

The tenant testified that he served the landlords with his evidence on 14 January 2015 by posting it outside the door of the individual landlord's office.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words "not less than", the last day for the tenant to file and serve additional evidence was 13 January 2014.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the late evidence consists of:

- emails between the tenant and landlord;
- the tenancy agreement;
- the tenant's tenancy application;
- the 2 Month Notice;
- the landlord's submissions from a previous hearing before the Residential Tenancy Branch on 26 November 2014;
- a two page submission from the tenant; and
- a copy of the Canada Post registered mail receipts.

The vast majority of the late evidence consists of documents that were already in the landlords' control and disclose nothing new to the landlords. The Canada Post receipts and tenant's submissions were not previously in the control of the landlords; however, I am conscious of the fact that the late evidence was submitted one day late. I find that there was sufficient time before this hearing for the landlords to familiarize themselves with the submissions and receipts and thus that there is no undue prejudice to the

landlords in my consideration of these documents. Accordingly, I admit all of the late evidence.

Preliminary Issue – Tenant's Request to Withdraw Dispute of Rent Increase

The tenant stated he had resolved the rent increase issue with his landlords and that he did not need to go ahead with his application to dispute the rent increase. The tenant asked that he be allowed to withdraw his application to dispute the rent increase. As there is no prejudice to the landlords by allowing the tenant to withdraw his application, I allowed it.

Issue(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67? Is the tenant entitled to an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in July 2006. At the time of this hearing, monthly rent was $1,393.00. Rent is due on the first of the month.

The tenant and corporate landlord were involved in a previous dispute before the Residential Tenancy Branch, which was heard 26 November 2014. In that claim, the corporate landlord sought compensation for $1,600.00 to $2,100.00 for painting the rental unit as well as $1,393.00 for lost rent. The tenant sought to cancel a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The 1 Month Notice was given on various alleged grounds including that the tenant had caused extraordinary damage to the rental unit, that the tenant did not repair damage to the rental unit as required, and that the tenant failed to comply with a material term. These claims related to a large number of pictures the tenant has hung on the walls of the rental unit.

The arbitrator who heard that application (the previous arbitrator) found in her written decisions dated 14 December 2014 that the 1 Month Notice was not valid. The

arbitrator did not award the landlord a monetary order. The arbitrator ordered a monetary order in the tenant's favour for $50.00, which was to be deducted from his next month's rent.

On 23 December 2014, the landlord issued the 2 Month Notice to the tenant. The 2 Month Notice set out that the landlord required possession of the rental unit as "the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

In a corrected decision issued 30 January 2014, the previous arbitrator issued an amended decision indicating that the landlord's claims for damages were dismissed because her claims were premature.

The tenant seeks an order that protects the tenant from future harassment by the landlord. In addition, the tenant seeks compensation in the amount of $2,800.00 for loss of quiet enjoyment, which represents a reduction of one-half rent for four months. The tenant testified that the individual landlord was causing him constant stress.

In particular, the tenant testified that the individual landlord had accused the tenant of masturbating outside other tenant's windows. The tenant vigorously denied these allegations and testified that he found them particularly hurtful because he has a 13 year old daughter who is in his care part time. The tenant testified that he asked the RCMP to check if any police complaints had been filed against him. The RCMP officer informed him that nothing had come up and if anyone had made an allegation such as the ones alleged by the landlord that the tenant would have been contacted by the police.

In addition, the tenant testified that since October the individual landlord's interference has not been bad as most of their communication is by email. The tenant testified before October, the landlord would send repeated harassing texts. The tenant testified that he is worried that the landlords will issue more eviction notices and that he will have to attend more hearings.

The tenant provided me with several emails from the landlord. The tenant testified that these are true reproductions of the emails between the tenant and landlord and that there are no relevant emails missing. These emails document a course of conduct by the individual landlord from 30 September 2014.

The landlord sent a large quantity of emails to the tenant. The landlord's emails would frequently be sent in succession with no chance for the tenant to reply. In one instance, two emails from the landlord were sent less than 50 seconds apart.

The landlord in an email series from approximately 22 December 2014 to 11 January 2015:

- accused the tenant of stealing the landlord's mail;
- accused the tenant altering the decision of the previous arbitrator;
- accused the tenant of masturbating outside other tenants' windows;
- threatened the tenant with further eviction, civil suit, and criminal action;
- refused to allow the tenant to deduct his monetary award as ordered by the previous arbitrator;
- told the tenant that the landlord wanted to "break up" the relationship;
- impugned the tenant and the tenant's lifestyle; and
- attempted to collect compensation for damages to which the landlord was not entitled.

The tenant's emails in reply to the landlord's emails were unremarkable. The tenant defended himself while maintain a civil tone.

Below are examples from the emails:

29 December 2014 @ 1039 email from individual landlord to tenant:

Here's what's coming next if you want to keep fighting with me – I'm going to sue you for $10,000 in court (not the rto) and when rent controls come off in a few months your rent would go out up $250 a month to make up for the losses you cost me. I don't want you here [tenant]. I'm trying to "break up" this relationship and you need to move on. You live like a dirty pig, you smell; and your antics have cost me in excess of 15,000. Just leave

29 December 2014 @ 1051 email from individual landlord to tenant:

It is my belief you stole the judgement from my mailbox and made up your own to suit your purposes.

31 December 2014 @ 0946 email from individual landlord to tenant:

It's interesting that you were adamant about not stealing my mail but not once did you say you didn't act as a sex offender towards other residents in the building. Obviously this isn't working and you will have to move.

31 December 2014 @ 0949 email from individual landlord to tenant:

In fact not once did you deny this allegation of masterbating (sic) at other residents windows, but you are adamant you didn't steal my mail.

31 December 2014 @1005 email from tenant to individual landlord:

This is a disgusting accusation. Of course I didn't do any of this, I didn't even know you had concocted any made up allegations about me until you turned in your 5 page rant about me to the arbitrator during eviction number 1. Not only did you falsely accuse me of a VERY serious crime which I was not even aware had happened until you told me, some 7 years ago, but you put it in writing in a government document, which is liable (sic). Also you mentioned you had mentioned me in a police report during this incident, no police talked to me about this. I recently went to [city police department] to find out if I was mentioned in said report under the 'Freedom of Information Act', and there were no such reports on file with my name on them.

Please be VERY aware I am NOT a sexual predator, nor have I EVER been one. Also such a cavalier attitude towards such a serious accusation is disgusting. There is a predator here, but it is not me.

31 December 2014 @ 1156 email from landlord to tenant

Obviously you can understand my positon of wanting to keep my tenants safe and comfortable in their residences. This obviously includes being safe from predators. It's one thing if you didn't commit these crimes; but if you did you should be held liable. It's up to the police at this point to see if they can get justice for these women. I think it's my social responsibility to make sure justice gets served and they follow all possible leads. I should have spoken up years ago but didn't and now did and it's not out of spite that I did so; it's out of social responsibility to ensure I did the best I could to attempt to resolve this situation and try to find justice for these women while ensuring that these type of scenario doesn't repeat itself here.

11 January 2015 email from individual landlord to tenant:

… Since you owe me $3100 the $50 will be minused from this amount as well the $1393 that you are entitled to as per the eviction notice. You will still owe me $ to cover the costs of the damages. The $1700 is for painting and wall repairs only. Other damages will be calculated also. Your cheque for Feb will be cashed and the jan cheque will be returned when you pay me for the damages. Please plan accordingly.

Analysis

In accordance with subsection 49(8) of the Act, the tenant must file his or her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month on 23 December 2014. The tenant filed his

application for dispute resolution on 6 January 2015. Accordingly, the tenant filed within the fifteen day limit provided for under the Act.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet her onus of proof.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

> A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy…
>
> If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.
>
> If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The landlord's emails raise serious questions as to whether the landlord is acting in good faith in her issuance of the 2 Month Notice. The 2 Month Notice appears to be an attempt to end the tenancy after the landlord's lack of success with a 1 Month Notice.

The 2 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment includes:

- reasonable privacy;
- freedom from unreasonable disturbance;

- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline, "6. Right to Quiet Enjoyment" provides helpful guidance for determining the tenant's claim:

> 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.
>
> …
>
> 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.

In this case, the landlord has:

- made repeated claims that the tenant is a sexual predator;
- made claims that the tenant has stolen the landlord's mail;
- refused to allow the tenant to deduct rent as permitted pursuant to an order of this Branch;
- claimed the tenant owed the landlord money after her claim was dismissed;
- threatened the tenant with criminal and civil action;
- told the tenant that he "smells" and "lives like a pig"; and
- sent repeated unwelcome emails to the tenant.

I find that this course of conduct by the landlord amounts to harassment as it is vexatious conduct that the landlord ought to have reasonable known was unwelcome. I further find that this harassment constitutes a breach of the tenant's quiet enjoyment.

I find that the course of conduct extended over at least the four months that the tenant claims, that is, October, November, December and January. I accept the tenant's evidence that he worries that he will face more hearings and more evictions from the landlord. I find that this harassment is serious and has resulted in stress and worry to the tenant. I find that the value of the tenancy is diminished by 25%. Accordingly, I find that the tenant is entitled to $1,395.00 from the landlord. I further order that the landlord

comply with the Act and respect the tenant's right to quiet enjoyment, by ceasing the harassing conduct.

As the tenant has been successful in his application he is entitled to recover his filing fee from the landlord.

The tenant is entitled to recover $1,445.00 on the following basis:

Item	**Amount**
Diminished value in October	$348.75
Diminished value in November	348.75
Diminished value in December	348.75
Diminished value in January	348.75
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$1,445.00**

Conclusion

The 2 Month Notice is set aside and is of no force and effect.

I order that the monetary order of $1,445.00 be deducted from the next months' rents. Payment of the net amount will meet the tenant's obligations pursuant to section 26 of the Act for those months.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 6, 2015

Residential Tenancy Branch