



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, OLC, RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; for repairs; and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, both landlords and their two agents.

At the outset of the hearing the tenant clarified that she had changed her mind and was planning to move out of the rental unit as soon as she could find new accommodation. She stated that she no longer wanted to dispute the Notice to End Tenancy.

As such, I amended the tenant's Application to exclude her request for more time to apply to cancel a notice to end tenancy and to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property. Further, since the tenant has agreed that the tenancy will end I find seeking an order to have the landlord comply with the *Act* and seeking repairs is moot and I have amended the tenant's Application to exclude these matters, as well.

Both parties confirmed that they had served each other and the Residential Tenancy Branch evidence and both parties confirmed that they had received the evidence from the other party.

While both parties have submitted evidence and served this evidence to each other the tenant confirmed that she served the landlord with additional evidence on April 28, 2015 or 6 days before the hearing. Residential Tenancy Branch Rule of Procedure 3.14 states that evidence not submitted at the time of the original submission of an Application must be served no less than 14 days prior to the hearing.

For evidence submitted or served less than 14 days prior to the hearing I must consider Rule of Procedure 3.17. This rule states that I may or may not consider the evidence depending on whether the evidence was available at the time of the application or when they submitted their other evidence.

The tenant submitted that she had just received these documents back from her lawyer and she had been advised by her lawyer that she would have been serving the documents in time. As her lawyer was not in attendance at the hearing it is not clear whether they were aware of the Rule of Procedure noted above.

As the documents are medical documents issued in January 2015; handwritten notes from the tenant; emails regarding events after the submission of her Application and bills and receipts issued after filing her Application I find that this evidence was either available to the tenant prior to the submission of her Application and her original package of evidence or not relevant to the claims made in her Application.

I therefore have not considered any of documents from this evidence package.

During the hearing the landlords requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the loss of quiet enjoyment; privacy, injury, harassment and intimidation, pursuant to Sections 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be determined if the landlord is entitled to an order of possession pursuant to Section 55(1).

Background and Evidence

The tenant provided into evidence a copy of a tenancy agreement signed by the tenant and the previous owner of the residential property on July 17, 2014 for a month to month tenancy beginning on August 1, 2014 for the monthly rent of \$950.00 plus \$100.00 for utilities due on the 1st of each month, with a security deposit of \$475.00 paid. The parties agree the current owner took possession of the residential property on December 23, 2014.

The tenant submits that she has complained on numerous occasions to the previous owner and to the new male landlord about the "uncontrolled noise and problems caused by the two men who are tenants in the below floor suite". The tenant further submits the male landlord "has been increasingly verbal abusive to me and harassing me..."

The tenant seeks compensation in the amount of \$25,000.00 for loss of quiet enjoyment; privacy, injury, harassment/intimidation and repairs. The tenant breaks down the compensation as follows:

Description	Amount
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Rent – 3 months @ \$1,050.00	\$3,150.00
Mental abuse; harassment; invasion of privacy including telephone and home entry; interference with medical appointments	\$5,000.00
Injuries – health and safety	\$16,482.88
Expenses – filing and preparing evidence	\$367.12
Total	\$25,000.00

The tenant submits that she is seeking her rent and utilities back for the 3 months the current landlords had owned the property and not taken care of her complaints; that she seeks \$5,000.00 as an amount for compensation for mental abuse and harassment at her lawyer's suggestion; and the amount for the injuries is based on the difference between the maximum allowable claim of \$25,000.00 and the other amounts she has claim. The tenant has provided receipts in her allowable evidence totalling \$102.45 for photographs; keys; and registered mail.

The tenant submits that since the start of the tenancy the downstairs tenants had been causing her disturbances that include noises and loud television late at night; parking difficulties in the driveway; and smells of "old men and dog feces". The tenant also complains about a problem with her stove having a peculiar odour.

The tenant submits that despite repeated complaints the landlords failed to do anything about the complaints. The landlords submit that whenever they questioned the basement tenants about any problems they indicated it was the upstairs tenant who was causing the disturbances.

The tenant has submitted a typewritten log of issues beginning with an odour issue discovered on September 9, 2014 after she cleaned the carpet – no other issues until November 4, 2014 when the tenant notes she tried to raise the following issues with the former owner: bad odours; oven smell and heat left on all day and night; shower too hot, and landlord being intimidating.

Her log records items like: "my newspaper stolen for months; tenant's interfering with Telus repair; fireplace fixed – contractor could smell bad odour in house", and more. The first notation of any noise disturbance is November 22 – 24 2014 stating that "other tenant in house noisy and TV on and loud until 2:00 a.m."

The tenant has submitted no records or documentation confirming that she reported any of these issues to the previous owner. The parties agree that prior to the finalization of the purchase the current landlords met with the tenants from both units. The tenant's log shows that on December 9, 2014 "Attempted to discuss previous and unresolved issues from previous landlord with new landlord" however there is no indication in any of the tenant's evidence as to what issues were discussed.

The landlords submit that the tenant had indicated to them at this meeting that she was generally happy with the rental unit but that she was somewhat unhappy with her stove.

The landlords submit there was no indication at that time from the tenant that there were any problems with the tenants in the basement unit or any problems with smells, or the driveway.

The tenants log continues with several entries after December 15, 2014 of verbal abuse from the landlord (does not state whether new or old landlord) and tenants and noise complaints through December, 2014; January, February, and March 2015.

The tenant notes on March 2, 2105: "I gave note to other Tenants in the house regarding parking their truck away from the level pavement, which I need for balance and spinal cord injuries." This is the first mention of any problem with parking in the tenant's evidence.

The tenant reports that she suffered an injury in January 2015 that resulted from the other tenants parking that required this tenant to park close to the edge of the concrete driveway. The tenant has submitted a doctor's note, dated April 14, 2015 that states: "This patient had a fall on January 21, 2015, causing severe soft tissue strain of her low back, causing severe pain." The tenant did not provide any allowable evidence to confirm such an injury at the time of its occurrence or any documentation that would confirm how or where she fell.

The tenant submits also that the landlord has entered her rental unit without notice and without permission. In a log entry dated December 11, 2014 she states that the new owners entered her rental unit, however the new owners did not take possession until December 23, 2014. Her log entry states also that she informed the previous owner of the new owners' entry but that she had no proof of the entry.

The tenant also asserts that the landlord had harassed by making repeated calls to her including towards the end of March 2015. The landlords submit that they were trying to get a hold of the tenant because she had left town with the heat turned off in the residential property. The tenant controls the heat to the basement unit and the basement tenants were complaining about no heat.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that when both parties provide verbal testimony providing differing plausible versions of events the party with the burden of proof must provide additional evidence to

corroborate their position and establish their claim. I find that the tenant has failed to meet this burden for any of her claims.

I find that in relation to the tenant's claim for \$16,482.88 for injuries – health and safety the tenant has provided no evidence at all that supports that she has suffered any injuries or health issues, with the exception of some soft tissue injuries resulting from a fall.

Even if she has fallen she has provided no evidence to support her claim that the landlord is responsible for any injuries or where the injury occurred. And finally, the tenant has provided no evidence to support that she has suffered any monetary loss let alone a loss of \$16,482.88 as a result of any injuries.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Despite the tenant's assertions in her documentary evidence and testimony I find the tenant has provided no evidence to establish a record of any disturbances caused by the basement tenants or from the previous owner. I also find that the current owners have provided plausible explanations and responses to the tenant's claims and the tenant has failed to provide any additional evidence to corroborate her claims.

I note that there is one exception in that the tenant has provided a copy of an email from a friend dated April 2, 2015 in which her friend states she stayed in the rental unit for the period of March 10 – 14 2015 and that basement tenants had the TV at a high volume starting from late evening until early morning. However, in the absence of any ability to authenticate the statements I find this one email does not provide any evidence to substantiate a claim for loss of quiet enjoyment to the magnitude the tenant claims that would warrant the return of 3 months' worth of rent and utility charges.

As to the claim for harassment, I find the tenant has failed to provide any substantiated evidence to corroborate that the landlords were doing anything more than following their obligations to both this tenant and the basement tenants by responding to this tenant's complaints about the basement tenants or attempted to contact the tenant in an emergency situation when she had left no heat on in the residential property.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authorizing the entry; the tenant has abandoned the rental unit; or an

emergency exists and the entry is necessary to protect life or property. Section 29(2) stipulates that the landlord may inspect a rental unit monthly.

I find there is no evidence submitted to support the tenant's claim that the landlords had entered the rental unit without notice or to deal with an emergency situation. I also note that the emergency situation was caused by the tenant's failure to leave the heat on when she had left town for a period of time.

Finally, in relation to the tenant's claim for costs associated with pursuing her claim I find the *Act* does not allow for the recovery of any such costs.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 21, 2015

Residential Tenancy Branch

