Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANDREW ZIBEN & SUANZI DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Tenant cancel a Notice to End Tenancy for unpaid rent, for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the Tenant's security deposit, to recover the filing fee for this proceeding and for other considerations.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on June 11, 2015. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

It should be noted that during the Hearing the Landlord named as K.L. was determined not to be a Landlord but a person who was with the Landlord A.Z. when the Landlord went in the Tenant's rental unit. The Tenant said she wanted the claims requested against K.L. to be transferred to the Landlord A.Z. as she thought K.L. was the Landlord's agent.

Issues(s) to be Decided

1. Is the 10 Day Notice to End Tenancy valid?
2. Is the Tenant entitled to an order to cancels the Notice to End Tenancy?
3. Are there losses or damages to the Tenant and if so how much?
4. Is the Tenant entitled to compensation for loss or damage and if so how much?
5. Is the Tenant entitled to recover the security deposit?
6. What other considerations are there?

Background and Evidence

This tenancy started on March 15, 2012 as a verbal month to month tenancy. Rent is $400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of $200.00 at the start of the tenancy. The Landlord said the security deposit was returned on March 24, 2015. There was no move in condition inspection report completed at the start of the tenancy.

The Tenant said she has applied to cancel the 10 Day Notice to End Tenancy for unpaid rent as she believes there is no unpaid rent. The 10 Day Notice to End Tenancy for Unpaid Rent submitted in the evidence package has two dates on it June 3, 2015 and May 5, 2015 and the bottom section of the Notice is not completed correctly; therefore under section 52 of the Act the Notice is deemed to be invalid.

The Tenant continued to say that because of the Landlord's actions she has suffered loss and damage and has made this application for monetary compensation. The Tenant's monetary claim is as follows:

1.	Loss of use of a generator	$ 251.91
2.	Compensation for damages from A.Z.	$14,600.00
3.	Compensation for damages from K.L. transferred to A.Z.	$ 8,000.00
4.	Relocation costs for moving	$ 1,400.00
5.	Temporary replacement door and hardware	$ 33.23
6.	Hearing expenses	$ 69.82
7.	Filing fee	$ 100.00
	TOTAL	$24,454.96

The Tenant said the Landlord took her generator; he also took a cooler with her food in it and her water barrel. The Tenant said she is not claiming for the cooler and water barrel, but mentioned them to show the background of the Landlord's actions towards her. The Tenant said she provide a receipt for the generator in the evidence package.

Further the Tenant tried to break down her claim against A.Z. on a day to day incident basis, but as the evidence package did not have this information it was very difficult to follow the detailed breakdown of the Tenant's testimony. The Tenant said there were a number of incidents which happened repeatedly but the total compensation claim against A.Z. is $14,600.00 and now that she understands that she cannot make a claim against K.L. because he is not her Landlord she has requested the claim against K.L. in the amount of $8,000.00 be added to the claim against A.Z. The Tenant continued to say her claims are based on a number of acts by the Landlord and his associates at the Tenant's rental unit. First the Tenant said the Landlord removed her door on June 3, 2015 as a method of evicting her from the rental unit. The Landlord confirmed that he did remove the door to the rental unit because he thought the Tenant was moving out and she did not leave. The Landlord's associate K.L. submitted a statement saying removing the door on a rental unit is a way to evict a tenant.
Secondly the Tenant said that the Landlord conducted tree clearing and earth moving in conjunction with the process to establish a septic system on the property. The Tenant

said no written notice was given to her and it obstructed her access to the rental unit as well as it diminished her quiet enjoyment of the property. The land clearing happened on May 13, 16, 23, 30 and 31, 2015, but the debris from the work impacted the Tenant from May 13, 2015 to the present. The Tenant said the Landlord beached many of the section in the Act including restricting services and facilities (loss of use of the driveway), removing the door to the rental unit and not replacing it, entered the rental unit without proper notice, the Landlord did not return personal property (the generator and cooler), and the Landlord interfered with the Tenant's quiet enjoyment of the rental unit. As a result the Tenant is requesting $14,600.00 and an additional $8,000.00 from the K.L. claim for loss of quiet enjoyment and aggregated damages.

In addition the Tenant is requesting $33.23 in emergency expenses for a temporary door for the unit, $1,400.00 for moving cost when she moves, $69.82 in expenses for the hearing and to recover the filing fee of $100.00.

The Landlord said he did remove the door and he did do the land clearing and earth work without giving written Notice to the Tenant. As well the Landlord said he took the generator and the cooler as he believed these items were his. The Landlord said he did not buy the generator and the cooler but he gave the Tenant back her security deposit which she used to purchase the generator. The Landlord said he did not know he was responsible to give written notice to the Tenant before doing the land clearing. Further the Landlord said the Tenant's access to the property was only obstructed or partially obstructed during the time they did the work between May 13, 2015 and May 31, 2015. The Landlord said he did not know the Residential Tenancy Act existed until this dispute. Further the Landlord said the Tenant has not paid the rent for April and May, 2015 and he would like an Order of Possession and a monetary Order for the unpaid rent.

The Tenant said she did work for the Landlord in lieu of rent for April and May, 2015. The Landlord said he would only pay the Tenant for the work if he used the work and a letter that the Tenant did for him.

The Landlord said in closing that the Tenant sent him an email dated May 4, 2015 that states the Tenant would no longer be paying rent as of June 1, 2015 and that the Tenant believes the Landlord has illegal rental units.

The Tenant said in closing that she believed K.L. was the Landlord's agent and that is why she named him and now is requesting her claim against K.L. to be transferred to the Landlord even though it is for the same incidents that she is claiming against the Landlord. The Tenant said that she has submitted an extensive evidence package including written statements, emails, copies of receipts, letters, a copy of the 10 Day Notice to End Tenancy, photographs (including a photograph of the Landlord removing the door to the rental unit) and other supporting evidence. The Tenant said she is requesting compensation for the Landlord's actions which resulting in breaches of the Residential Tenancy Act.

Analysis

Firstly it was understood by both the Landlord and the Tenant that the 10 Day Notice to End Tenancy for unpaid rent dated either May 5, 2015 or June 3, 2015 was not complete in compliance with section 52 of the Act. Therefore the Notice is invalid. The error on the Notice is that it is not dated correctly and there is no address in the bottom section of the notice. Section 52 states a notice must be completed correctly for the notice to be valid. The Notice to End Tenancy is cancelled without leave to reapply.

From the testimony of both the Tenant and the Landlord there is no dispute that the Landlord removed the door of the rental unit on June 3, 2015 and has not replaced it. As well the Landlord agreed that he has performed tree clearing and earth work on the property without giving the Tenant proper written notice. Further the Landlord said he removed the generator and the cooler from the rental unit. It is apparent that the parties agree on the actions of the Landlord; therefore I must determine if these actions have breached the Residential Tenancy Act and if so how much compensation is the Tenant entitled too if any.

First the Tenant has requested her claim of $8,000.00 against K.L., who she thought was the Landlord's agent, to be transferred as an additional claim against the Landlord because K.L. is not part of the tenancy agreement and he is not an agent of the Landlord. The Residential Tenancy Act only has jurisdiction between landlords and tenants and in this case K.L. is not on the tenancy agreement and there is no prove that he is an agent of the Landlord; therefore the Act has no jurisdiction to rule on matters between the Tenant and K.L. I dismiss the Tenant's claim of $8,000.00 against K.L. due to lack of jurisdiction. As well I am deleting K.L. from the application and order if the Tenant is successful.

Further the Tenant has requested to amend the application to include the claim of $8,000.00 against K.L. to the Landlord. As the incidents that the Tenant is claiming for are the same for both the Landlord and K.L. I find the Tenant's amendment request in effect doubles some of the Tenants claims for the same incidents, I do not accept the Tenants request to include the claims against K.L. in this application. The Tenant's request to amend the application to include the claim against K.L. to the Landlord is dismissed without leave to reapply.

With respect to the Tenant's claim for loss of use of the generator of $251.91, I find that both parties agree the Landlord removed the generator and has not replaced it therefore pursuant to section 67 of the Act; I find for the Tenant and award $251.91 as compensation for the removed generator.

In regards to the Tenant's claim for moving cost of $1,400.00 the Tenant is still living in the rental unit therefore no moving costs have been incurred therefore no loss has been proven. For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts

and the applicant must show how they mitigated or minimized the loss. The Tenant has not proven a loss for moving costs and when a tenant moves from one rental to another it is normally the tenant who pays the moving costs. I dismiss the Tenant's claim for $1,400.00 for moving costs as no loss is proven.

Further both the Tenant and the Landlord agree the Landlord removed the door of the rental unit on June 3, 2015. In the Landlord's evidence there is a witness statement from K.L. saying that removing the rental unit door is a way to evict a tenant. This action is in contravention of the Act under Section 28, 29, 30, 31, 32 and 33. To remove the door of a rental unit while a tenancy is in effect just to cause a situation that would evict or cause the Tenant undue hardship that would cause the Tenant to move out is **wrong**. Consequently I accept that the Tenant has established grounds for compensation as a result of the Landlord removing the door of the rental unit. The Landlord created an unsafe situation for the Tenant and the Landlord did so with malus and in violation of the Act. This is a serious breach of the Act: first in the physical sense of the rental unit, secondly for loss of quiet enjoyment and third for aggregated damages. First due to the Landlord removing the door and breaching section 31, 32, 33 of the Act, I award the Tenant $400.00 for the June, 2015 rent and I order the Tenant **not to pay** any further rent during the tenancy until the Landlord repairs the door to the satisfaction of the Tenant.

Secondly pursuant to section 28 of the Act and policy guideline # 16; I award the Tenant $100.00 per day from June 3, 2015 to July 7, 2015 for loss of quiet enjoyment and aggravated damages for the unsafe condition of the rental unit due to the door being removed from the rental unit. I find a door to a rental unit is an essential part of a rental agreement and as the Landlord removed the door the Landlord breached the tenancy agreement. The Tenant did have use of the rental unit without a door and she did use it therefore I find $100.00 per day compensation is warranted. I award the Tenant $3,400.00.

Further I also award the Tenant the amount of $33.23 for the temporary door materials that the Tenant used to replace the proper door the Landlord removed.

With respect to the Tenant's claim for loss of access, loss of quiet enjoyment and aggravated damages for the tree removal and earth moving on the property without giving the Tenant written notice of the activities; I find the Tenant has established grounds for a claim as the Landlord said he did these things without written notice to the Tenant. The Landlord indicated in his testimony that the Tenant was only obstructed from using the driveway during the time they were working on the property. Pursuant to sections 27, 28, 29 and 30 of the Act; I find the Tenant has been obstructed from normal access to the rental unit and facilities or services in the form on access to the rental unit were compromised; therefore I award the Tenant $25.00 per day for compromised access to the rental unit and $25.00 per day for loss of quiet enjoyment and aggravated damages for the time between May 13, 2015 to May 31, 2015, the time the work was being done. For a total of 18 days times $50.00/day in the amount of $900.00.

Further the Tenant has claimed $69.82 in hearing preparation costs which are not eligible claims under the Residential Tenancy Act. I dismiss the hearing preparation costs of $69.82 without leave to reapply.

As the Tenant has been partially successful in this matter, the Tenant is also entitled to recover from the Landlord the $100.00 filing fee for this proceeding. Pursuant to sections 67 and 72 of the Act the Tenant will receive a monetary order for the balance owing as following:

Loss of generator:	$ 251.91
Loss of the door (safety issue)	$ 400.00
Loss of quiet enjoyment & damages (due to the loss of the door)	$ 3,400.00
Temporary door repair expenses	$ 33.23
Restricted access to the unit	$ 450.00
Loss of quiet enjoyment & damages (due to the restricted access)	$ 450.00
Recover filing fee	$ 100.00
TOTAL	$ 5,085.14

Conclusion

A Monetary Order in the amount of $5,085.14 has been issued to the Tenant. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant is ordered to withhold rent until the door on the rental unit is replaced to the Tenant's satisfaction.

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: July 07, 2015

Residential Tenancy Branch