



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was personally served on the landlord on June 1, 2015. I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was personally served on tenant on July 2, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the tenants are entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and tenancy agreement?
- c. Whether the tenants are entitled to a monetary order and if so how much?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2014, end on June 30, 2015 and the tenants

would have to vacate at that time. The rent is \$750 per month payable on the first day of each month. The tenants paid a security deposit of \$350 and a pet damage deposit of \$350 at the start of the tenancy. The tenant(s) failed to pay vacate at the end of June 2015 and remain in the rental unit.

The rent for July was paid but it was accepted by the landlord for “use and occupation only.”

Landlord’s Application - Analysis - Order of Possession:

Policy Guideline #30 includes the following:

Orders of Possession and Fixed Term Tenancies

In addition to the procedures under the Legislation for terminating a tenancy for cause or for non-payment of rent, a landlord may apply for an Order of Possession in respect of a fixed term tenancy when any of the following occur:

- the tenant has given proper notice to the landlord as a result of a material breach by the landlord;
- **the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;**
- the landlord and tenant enter into a written agreement specifying that the tenancy agreement shall end on a specified date. (my emphasis)

I determined the landlord was entitled to an Order for Possession. The parties entered into a fixed term tenancy that provided that the tenant would vacate at the end of the fixed term. One of the tenants initialed this provision. The explanation of the tenants that they failed to read is not an excuse. The tenants testified they are having problems with the Ministry about the Ministry paying another security deposit. Further, they do not have sufficient money to move and have demanded the landlord pay their moving expenses and they are having difficulties finding a new apartment to move to that is prepared to take their 13 year old cat.. The law does not recognize these as defenses to the landlord’s claim.

Accordingly, I granted the landlord an Order for Possession. The rent has been paid for July 2015 and accepted by the landlord for “use and occupation only.” **I set the effective date of the Order for Possession for July 31, 2015.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenants' Claims:

The Application for Dispute Resolution filed by the tenants seeks and order that the landlord comply with the Act, regulations, or tenancy agreement. I dismissed this claim as the tenants failed to provide sufficient evidence that the landlord has breached the Act, Regulations or tenancy agreement.

The tenants seek a monetary order in the sum of \$500 claiming the landlord has breached the covenant of quiet enjoyment. In particular the tenants claimed the downstairs tenant disturbed their peaceful enjoyment by slamming doors and hitting the walls. This lasted for 2 to 3 months and for the most part is no longer a problem. Further the tenant that lives down the hall has visitors coming and going at all hours of the day and night. The landlord testified he talked to both the downstairs tenant. There is no longer a problem with the downstairs tenant. The tenant who lives across the hall has placed seals on his doors to reduce the noise and has talked to his guests about reducing noise when they come to visit.

Section 28 of the Act provides as follows:

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.

Policy Guideline #6 provides 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;

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

After carefully considering all of the evidence I determined the tenants have failed to establish that the landlord has breached the covenant of quiet enjoyment. The tenants did not present evidence alleging the landlord was causing the disturbance. Rather the disturbances were caused by the downstairs and a neighboring tenant. Further, it cannot be said that the landlord has stood idly by. In the first instance the landlord was successful in resolving the problem as the tenants complained about noise from the downstairs tenant for the first two to three months only. In the second case I am satisfied the landlord has made reasonable efforts to rectify the problem. The tenants failed to prove that the opening and closing of a door in order to provide guest entry

amounts to an unreasonable disturbance. Finally, the tenants produced a large number of photographs showing ongoing work in the rental unit. The landlord testified he has provided the tenants with a new fridge, new stove, new electric panel, fixed taps and blinds instead of drapes. The tenants failed to provide sufficient evidence that the condition of the rental unit is sufficient to provide them with an order for the reduction of rent.

As a result I order the application of the tenants for a monetary order is 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: July 16, 2015

Residential Tenancy Branch

