



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0768721 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc, o, ff

Introduction

The tenants apply for a monetary order from the landlord, for compensation for a breach of quiet enjoyment, for aggravated damages, and recovery of their filing fee, all related to conduct of the landlord during the last month of their tenancy.

Both parties attended, and prior to the hearing had properly exchanged their evidentiary materials.

A previous hearing of this claim occurred with a different arbitrator who unfortunately was unable as a result of illness to make a decision. A new hearing was held before me, and my decision is based entirely upon the materials and testimony before me.

Issue(s) to be decided

1. Have the tenants proven they suffered a compensable loss of quiet enjoyment?
2. Are the tenants entitled to be awarded aggravated damages?
3. Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This tenancy began August 1, 2010 and ended December 31, 2014. Until the final month, the relationship between the tenants and the landlord was good.

The tenants submit that upon the landlord getting their notice to end the tenancy, the landlord began contacting the tenants via email, regarding access to the property. When the tenants were unable to make the unit available on less than 24 hours notice, the landlord responded with repeated threats to access the unit on an unauthorized basis. The landlord acknowledged by email that the law was inconvenient, and chose not to follow it when making arrangements for viewings of the premises to prospective tenants. The female tenant found these emails distressing. When the landlord finally did comply with the tenants' request to serve notices properly, the landlord posted the notices, but did not include the time of 3 days in which notices are deemed to be received.

The tenants further submit that as a result of this breach of quiet enjoyment, the female tenant began experiencing overwhelming feeling that she had lost control of the rental unit. The tenant submit the landlord intentionally inflicted disturbance upon the tenants, and although aware that she worked as a nurse, refused to accommodate her sleeping

schedule, affecting her health and wellbeing, and exacerbating her medical condition of anxiety. She became anxious that the landlord would come to her door while she slept. She pushed her stove up against the door to prevent him from entering. She worried about seeing him in the laundry area, or coming and going from the building. Her anxiety persisted until mid-February.

The landlord denies any wrongdoing. He notes the tenants were wonderful until the final month of the tenancy. He acknowledges there were numerous emails exchanged between the parties, but that many of his were in response to emails received from the female tenant. He notes that an unfortunate situation occurred whereby advertising for new prospective tenants was done, visits arranged, appointments made, but then cancelled as a result of the tenant's sleep schedule. No threats were ever made. When he asked for her sleep schedule, the female tenant would not provide it. The female tenant's medical evidence demonstrates she was treated for anxiety 18 months before the end of the tenancy, but the medical record provides no support to show her anxiety was related in any way to her tenancy. The landlord submits that it is common for tenants to work cooperative with a landlord when it comes to showing the premises to a new tenant, and seldom does he need to resort to formal notices. In his view, no loss of quiet enjoyment was suffered, and the tenants are simply trying to exploit a financial windfall.

Analysis

The covenant of quiet enjoyment promises that tenants shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects tenants' right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, tenants must prove not simply that they were interfered with, but that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions, that renders the premises unfit for occupancy for the purposes for which they were leased. To be a substantial breach requires a significant level of severity, or frequency, or be ongoing for a significant time.

On the other hand, it is necessary to balance the tenant's right to quiet enjoyment with other factors. For example, when a tenancy is about to end, tenants must expect that a landlord are permitted, and will show the premises to prospective tenants while their tenancy is still ongoing.

In this case I have carefully read all of the emails exchanged between the parties, and their conduct. It is apparent to me, as an objective reader, that a deterioration of the relationship between the landlord and tenants quickly materialized in early December. The email exchange that began with attempts to coordinate showings and access, degenerated into instances of posturing and some unnecessary ad hominem comments. I consider this to have occurred as a result of conflicting yet understandable interests as between the parties. The female tenant had a strong need and desire to retain privacy,

and to be able to sleep during the day to accommodate her work at night. The landlord had an equally strong need and desire to place a new tenant in the premises for the following month, and showings had to occur during the day. The female tenant wanted no interference with her daytime sleep, and wanted certainty as to the times of showings, but such certainty was out of the landlord's control given that it was based to a great extent upon the schedules of the prospective tenants. As is the case in many disputes between a landlord and tenant, the landlord's interests were commercial in nature, while the tenant's interests were domestic in nature.

The email exchange began with the landlord's expectation that the time of showings could be negotiated, and be flexible. It was reasonable that the landlord would assume that the tenant would be cooperative in this regard, given his lengthy experience as a manager during which time this has overwhelmingly been the case. On the other hand, it was not unreasonable for the female tenant to insist upon the proper formal notice to be given, and to rely upon her rights under the Residential Tenancy Act in this regard.

There is no question in my mind that the tenants took offense to comments in some emails, and that the female tenant came to a belief that she no longer had control of the rental unit. I accept that they suffered a disturbance of their tenancy. To qualify for compensation however, it must be shown that this disturbance was serious and unreasonable. In this respect, the tenants' evidence and testimony falls short of demonstrating the necessary level of severity.

I begin with the obvious facts that it was not the landlord's fault that the female tenant wanted to sleep during the day, at times when showings were necessary. While not improper in any way, the tenants knew or should have known that day time disruptions and showings were inevitable upon their having ended the tenancy. Just as the landlord would not want to lose a month's rental income by waiting for the tenancy to end before showing the premises, the tenants would not want to pay double rent at two premises, so as to avoid any disruptions of sleep.

I note that it has not been shown that any trespasses by the landlord or by caretakers were proven to have occurred. In cases where the caretaker came to the door, either the caretaker left when the door was not answered, or was given permission to enter. I note that the exchange of emails demonstrates a passive-aggressive quality on the part of both writers, not just the landlord's. Both show a pouting or snide quality when the opposing party failed to concede the point of the other. Although bothersome to the tenants, I do not find that the content of any emails, or the repetition were serious enough to constitute harassment. While numerous, I note that the tenants contributed to this reality by writing just as many, and the tenants knew or should have known that emails they sent to the landlord would be responded to.

In short, the tenants have failed to demonstrate a serious interference with their right to quiet enjoyment. I add that the female tenant's claim that the landlord's conduct exacerbated her anxiety is not supported by any medical or treatment notes. While it may have occurred, there is no medical proof to support the claim that the landlord

caused or contributed to the female tenant's anxiety issues.

Conclusion

The tenants' claims as to a loss of quiet enjoyment, as to aggravated damages, and as to recovery of the filing fee, are all 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: December 04, 2015

Residential Tenancy Branch

