



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, FF, O

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and provided affirmed testimony. Both parties have confirmed receipt of the submitted documentary evidence provided by the other party. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

The tenant provided digital evidence in the form of pictures and videos to be viewed via a link on the internet.

Residential Tenancy Branch, Rules of Procedure 3.10 speaks to Digital Evidence and states,

3.10 Digital evidence

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

Digital evidence must be accompanied by a printed description, including:

- ☐ a table of contents;
- ☐ identification of photographs, such as a logical number system;

- ☐ a statement for each digital file describing its contents;
- ☐ a time code for the key point in each audio or video recording; and
- ☐ a statement as to the significance of each digital file.

To ensure a fair, efficient and effective process, identical digital evidence and the accompanying printed description must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office. The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered. Residential Tenancy Branch Rules of Procedure. If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have 7 days with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide the Residential Tenancy Branch and each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I find that the tenant's submission of digital evidence does not meet the criteria as set out in the Rules of Procedure 3.10. As such, the tenant's digital evidence is excluded for the purposes of this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss and recovery of the filing fee?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

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

Both parties confirmed that this was a tenancy which began on December 1, 2013 on a month-to-month basis and that the monthly rent was \$1,600.00 payable on the 1st day of each month. A security deposit of \$800.00 and a pet damage deposit of \$500.00 were paid. A written tenancy agreement governs this tenancy, but neither party submitted a copy.

The tenant seeks monetary compensation for the loss of quiet enjoyment for \$3,280.00. The tenant stated that the compensation request is based upon the loss of quiet enjoyment equal to ½ the monthly rent (\$820.00) for a period of 4 months (\$820.00 X 4= \$3,280.00).

The tenant stated that the landlord has disturbed the tenant's quiet enjoyment by entering the rental unit without permission or notice. The tenant referred to an incident that took place on September 23, 2015 in which the landlord "broke into" the rental premises. The tenant stated that the landlord attended the rental unit and entered the premises without permission or notice. The tenant has referred to a written summary of the video dated September 23, 2015 which states that the landlord attended the rental premises without notice and entered the premises to change the locks. The tenant stated that police were called and that the landlord left. The landlord disputed the tenant's claims stating that the landlord has only attended the rental premises to pick up the monthly rent on the 1st of each month and on two other occasions. The landlord stated that the landlord was accessing a basement unit which the landlord alleged to be part of a verbal agreement. Both parties confirmed that on November 19, 2015 in a Residential Tenancy Branch Hearing for Dispute a finding was made which states,

I have reviewed the identical written tenancy agreements submitted by both parties and find that the description of the rental unit, that being a single family dwelling, to be clear and unambiguous. I find there is no provision in the written tenancy agreement which would allow the landlord use of a portion of the rental unit and the clear intent of the tenancy agreement, with its use of the phrase, single family dwelling, in my reading is that the tenants will have unencumbered and unfettered use and possession of the entire home and common area during this tenancy.

As to the landlord's argument that the parties had a verbal agreement that the landlord would use a portion of the basement, I find this position unfounded and unsupported. The tenants disagreed with this submission of the landlord, and I find that conflicting and disputed testimony does not sufficiently meet the burden of proof.

The landlord has disputed this claim, but has failed to provide any supporting evidence in support of the claim. The landlord has not even filed an application for review of this decision. As such, I find that there is no reason to question the finding made by the other Arbitrator. The tenant has full use and possession of the rental premises without any conditions of the landlord for access and use of a portion of the basement.

The tenant has also stated that on another occasion on January 21, 2016 the landlord served notice to the tenant that the landlord would attend the rental premises for an inspection on January 23, 2016. The tenant disputed this notice as no time was provided. The tenant provided conflicting testimony that the landlord would be attending to remove items from the basement. The landlord disputes this claims and refers to the two handwritten letters dated January 1, 2016 and January 31, 2016 in which the tenant has requested the landlord to attend and remove items from the rental premises. The landlord stated that in the January 1, 2016 letter the tenant is requesting that the landlord attend prior to February 1, 2016 to remove these items which the landlord did not attend.

The tenant also seeks an order to suspend or set conditions on the landlord's right to enter the rental premises relying on the tenant's evidence referred to above as the landlord's failure to comply with a previous finding. The landlord disputes this portion of the claim stating that the landlord has only attended the rental premises twice since the tenancy began other than to collect monthly rent on the 1st of each month.

Analysis

Residential Tenancy Branch Policy Guideline #6, Right to Quiet Enjoyment states,

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”.³ 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.

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

The tenant has provided evidence of two occasions on which the landlord entered the rental premises without notice. The landlord has disputed these claims. I find based

upon the disputed evidence of both parties that the tenant has failed to provide sufficient evidence to satisfy me on an ongoing or repeated activity of the landlord that would cause a loss of quiet enjoyment. The tenant has stated that the loss of quiet enjoyment has occurred repeatedly over a 4 month period in which she seeks compensation equal to ½ of the monthly rent, yet has only provided two incidents to rely upon which is disputed by the landlord.

The onus or burden of proof is on the party making the claim, in this case the tenant. The tenant has provided direct testimony of their claims of the loss of quiet enjoyment and the request to suspend or set conditions for the landlord's right to enter the rental unit. The landlord has also provided conflicting direct testimony disputing the tenant's claims. I find on a balance of probabilities that the tenant has failed to provide sufficient evidence that the landlord caused a breach of the tenant's right to quiet enjoyment. The tenant has also failed to provide sufficient evidence that the landlord has failed to comply with sections 29 of the Act.

Conclusion

The tenant's application 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: March 24, 2016

Residential Tenancy Branch

