



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nirla SharmaK & G Clare Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD,O

Introduction

This was an application by the tenant for monetary orders for recover of his security deposit, compensation from the landlord as a result of a breach of the Act, in particular the breach of the covenant of quiet enjoyment, and for moving expenses.

Issue(s) to be Decided

Is the tenant entitled to recovery of his security deposit and to any other compensation?

Service of the Application:

Based on the tenant's evidence that he sent the application for dispute resolution by registered mail to the landlord on September 15, 2015, I find that the application was deemed to have been served five days later on September 20, 2015.

Background and Evidence

The tenant testified that the tenancy began on or about the month of May 2015 with rent amounting to \$ 700.00 per month. The tenant paid a security deposit of \$ 350.00 at the beginning of the tenancy.

The tenant testified that he was harassed by the landlord and family from the beginning of his tenancy until he moved out. That conduct was comprised of:

turning his power off for several days, removing his belongings from the deck, yelling

obscenities at him, entering his suite without permission, withholding his mail, disabling his cable and internet, removing his fridge and cupboards and stomping on his ceiling. The tenant vacated his unit on July 22, 2015 because he could no longer tolerate the harassment. He testified that as soon as he left and before the end of his tenancy the landlord changed the locks preventing him from returning to his unit.

The tenant testified and produced a copy of a letter dated July 22, 2015 which he hand delivered in the accompaniment of a police officer notifying the landlord of his new address and requesting the return of his security deposit. The tenant testified that to date he had not received any portion of his security deposit returned nor had he given the landlord consent to keep any portion thereof.

The tenant claims for:

- double his security deposit amounting to \$ 700
- moving expenses occasioned by his necessity to move amounting to \$ 150.00
- compensation for the breach of covenant quiet enjoyment amounting to \$ 700.00.

Analysis

I accept the tenant's evidence that he had not received the return of his security deposit within the time permitted by the Act, nor had he given the landlord permission to keep any portion thereof. I find that pursuant to section 38 of the Act the tenant is entitled to recover double his security deposit amounting to \$ 700.00.

Turning to the issue of the loss of the tenant's right to quiet enjoyment, Section 22 of the Act states:

Protection of tenant's right to quiet enjoyment

22 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 manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Policy Guidelines are intended to provide a compendious statement of the law, including the common law principles that apply to residential tenancy matters. Policy Guideline 6 states:

The Residential Tenancy Act and Manufactured Home Park Tenancy Act (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- **reasonable privacy**
- **freedom from unreasonable disturbance,**
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from **significant interference**
- 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;**
 - persecution and intimidation; • refusing the tenant access to parts of the rental premises; • preventing the tenant from having guests without cause; • intentionally removing or restricting services, or failing to pay bills so that services are cut off; • forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, • **allowing the property to fall into disrepair so the tenant cannot safely continue to live there.**
- **Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.**
- **Harassment**
 - 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". 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.
- **Claim for damages**
 - In determining the amount by which the **value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the**

situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

I accept the tenant's uncontradicted evidence that the landlord had embarked on a campaign of harassment during his tenancy and after he gave his notice which effectively was a breach of section 22 and the covenant of quiet enjoyment. For that conduct I award the tenant the sum of \$ 700.00. In addition I award him his moving expenses of \$ 150.00 as I accept his explanation that he ended his tenancy because the landlord made his ability to enjoy his unit impossible.

I find that the tenant is entitled a total award of \$ 1,550.00

Conclusion

Pursuant to section 67 of the Act I grant the applicant a monetary Order in the amount of **\$ 1,550.00**. This Decision and Order must be served on the respondent as soon as possible. If the respondent fails to satisfy the Order the applicant may execute it in the Small Claims Court of B.C.

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 15, 2016

Residential Tenancy Branch