Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parhar Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant and an agent for the landlord.

This matter was originally adjudicated at a hearing conducted on May 13, 2014 with a decision made the same date granting the tenants a monetary order in the amount of $6,370.62 for the loss of value to the tenancy; hotel expenses and to recover the cost of a $50.00 filing fee. I note from the file the tenants had paid a filing fee in the amount of $100.00 to pursue this Application for Dispute Resolution.

On February 10, 2015 the Supreme Court of British Columbia ordered that the Decision dated May 13, 2014 was patently unreasonable and the remedy was to send the matter back to the Residential Tenancy Branch for reconsideration. As a result, the Residential Tenancy Branch scheduled this new hearing. The Court also ordered that the appropriate records for consideration should be the records from the hearing of May 13, 2014 and another hearing that occurred in March 2014.

In compliance with the order of the Court I have recorded, in this section of this decision, the context of the March 25, 2014 hearing; the content of the decision issued on March 25, 2014; the content of the March 25, 2014 hearing file; testimony heard at the February 24, 2016 hearing and my findings on the relevancy of that hearing and decision.

On March 25, 2014 a hearing was convened based on the landlord's Application for Dispute Resolution seeking an order of possession to end the tenancy of other occupants in the residential property early and without notice. The lower occupants and the landlord had a tenancy agreement separate from the tenancy agreement between the upper occupants and the landlord. A decision was rendered the same date that granted the landlord an order of possession effective 2 days after it would be received by the other occupants.

From the decision of March 25, 2014 the Arbitrator wrote:

> "Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing was explained. The participants had an opportunity to submit documentary evidence prior to the hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.
>
> A witness for the landlord also appeared."

I note the "parties" referred to in that decision include the landlord (respondent in the claim before me) and the tenant who, in relation to the subject tenancy in the matter before me, were the lower occupants on the residential property. I note specifically that the applicants in the claim before me were not named as a party to the hearing and decision of March 25, 2014.

From her undisputed testimony at the hearing of February 24, 2016 I accept that the female applicant did not attend the full March 25, 2014 hearing but that she appeared for a part of the hearing as witness on behalf of the landlord. The tenant submitted that she was not aware of what was said either before she was called into the hearing or after she left the hearing.

She stated that she was never led to believe that the hearing of March 25, 2016 had been convened to determine if the landlord had cause to end her tenancy and if that were the case she had not been given an opportunity to present any evidence in response.

The Arbitrator went on to write (March 25, 2014):

> "Based on the testimony of the landlord, the lower tenant, the witness and the evidence submitted, I find that the conduct as described that was attributed to both the lower tenants and the upper tenants, would satisfy the first criteria specified under section 56(2)(a) of the Act, excerpted above, applicable to either or both the tenancies.
>
> I find that these two couples apparently resent and abhor one another to the extent that they have each exhibited disruptive conduct on an ongoing basis that satisfies the criteria under the above section.
>
> Because of the nature of the conduct in question, I find that the behavior of both the lower tenants and the upper renters also meets the second threshold under 56(2)(b). I find there is ample justification to immediately end either one, or both, of these tenancies under this section of the Act.
>
> However the matter before me today, is only an application by the landlord seeking an order of possession to end the tenancy of the *lower tenants* early without Notice."

I note from the file of the March 25, 2014 hearing the landlord had submitted, into evidence, 15 typewritten pages from their witness (the female applicant in this claim) recording numerous complaints of disturbances caused by the lower occupants of the residential property.

The landlord also submitted as evidence against the lower occupants a complaint from a neighbor and one email from their witness. I also note that there was no documentary evidence, whatsoever, recording any complaints from the lower occupants against the witness.

Upon review of this information, I find that the decision of March 25, 2014 is of limited value to the adjudication of the tenants' monetary claim.

I accept that the Decision of March 25, 2014 found the lower occupants had caused significant disturbances sufficient to warranting the issuance of an order of possession based on the landlord's submissions and testimony from both parties and the witness.

I also accept that the March 25, 2014 decision established that the lower tenants did caused unreasonable disturbances that impacted the upper tenants based on the proceedings to end the tenancy directed completely against the lower tenants.

I accept the applicants in the case before me were never a named party to the March 25, 2014 hearing; neither of the applicants participated in the full hearing conducted on March 25, 2014; and they were never given an opportunity to respond to any claim that the landlord might have had cause to end their tenancy.

Again, I note that the landlord's evidence at the March 25, 2014 hearing, despite including 15 pages of complaints from the upper tenants; another complaint from a neighbor about the lower occupants and an email from the upper occupants there was not one documented complaint against the upper tenants.

I find it was unfair, based on the principles of natural justice, for the Arbitrator to determine that she had enough evidence to determine that the landlord had cause to end the tenancy of the upper occupants specifically because the hearing was not convened for that purpose and the upper occupants were never given an opportunity to respond.

Furthermore, I note this claim is related to compensation sought by the tenants for the landlord's failure to fulfill their obligations under the *Act*, regulation and tenancy agreement between the landlord and these tenants.

I find that whether or not the landlord had cause to end this tenancy is not germane to whether or not the landlord fulfilled their obligations to these tenants, with the possible exception of consideration of a claimant's obligation to mitigate any losses prior to making a financial claim against the landlord.

In addition, I note that the May 13, 2014 decision, in response to this Application for Dispute Resolution makes no references, by either of the parties or the Arbitrator to the decision of March 25, 2014. As such, I find the Arbitrator had not relied on any portion of the March 25, 2014 decision in adjudicating the May 13, 2014 decision.

Additionally, at the outset of the February 24, 2016 hearing I advised the parties of the test for damage or loss claims that I use as a tool to assist me adjudicating such claims. The test I stated was that the party making the claim, in this case, the tenants, had the burden to provide sufficient evidence to establish the following 4 points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Residential Tenancy Act (Act),* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

During the hearing the landlord referred to the 4 point test the Arbitrator in the May 13, 2014 hearing used. In her decision, dated May 13, 2014 the Arbitrator wrote:

> "I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:
>
> Test for Damage and Loss Claims
>
> 1. Proof that the damage or loss exists,
> 2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
> 3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
> 4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.
>
> In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and the corresponding loss."

Specifically, the landlord pointed out that the Arbitrator who wrote the May 13, 2014 Decision stated that the damage or loss happened *solely* because of the actions or neglect of the respondent in violation of the *Act* or agreement.

As noted these tests are tools used by arbitrators to assess the validity of monetary claims. The actual test is provided under Section 7 of the *Act*. Section 7(1) of the *Act* states if a landlord does not comply with this *Act*, the regulations or their tenancy agreement, the landlord must compensate the tenant for damages or losses that result from their non-compliance.

Section 7(2) states that a tenant who claims compensation for damage or loss that results from the landlord's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the "Details of the Dispute" section of their Application for Dispute Resolution the tenants identified that they were seeking compensation for the failure on the part of the landlord to comply with Section 28, stating: "Landlord has failed to provide quiet enjoyment from March 2013 to February 2014."

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

While I have not used the words "*solely* because of the actions or neglect of the Respondent" I do agree that it is *solely* the obligation of the landlord to ensure they fulfill their obligations under the *Act* such as the provision of rental accommodation that provides the tenants with reasonable privacy; is free from unreasonable disturbances; is under the tenants' exclusive possession and includes the use of common areas free from significant interference.

I also find that while another occupant may cause a disturbance to a tenant, however, that does not absolve the landlord from responding to complaints of disturbances and resolving them within a reasonable time. I find that this obligation rests solely with the landlord, pursuant to Section 28 of the *Act*. This decision is made in that context.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for the landlord's failure to ensure the tenant's quiet enjoyment and heat; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act.*

Background and Evidence

The parties agreed the tenancy began in June 2012 as a month to month tenancy for a current monthly rent of $1,530.00 due on the 1st of each month with a security deposit of $730.00 paid. The tenancy ended by April 30, 2014.

The tenant submitted that from the start of the tenancy they had no complaints regarding the lower unit until the occupants moved into the lower unit in March 2013 when the tenants started complaining to the landlord about the lower occupants causing disturbances. The landlord did not dispute these statements or provide any evidence or testimony that any previous lower occupants had complained about the tenants.

The tenant submitted that the disturbances began with aggression and threats of violence against the male tenant and further incidents included smoking inside of the residential property; being loud and violent; screaming at the tenants' children; playing the television and music at high volumes at all times of the day and night, including while the lower occupants were away from the property.

The tenant submitted into evidence a listing of their attempts to contact the landlord. This listing states that it is not a complete list as they did not document every call. The submission also states that the landlord did not return calls or would take a week or more to respond if she did.

The listing shows the tenants reported disturbances in March, April, July, August, September, October 2013 and January, February and March 2014.

The tenants also included copies of email communication with the landlord some examples of relevant emails include:

- Complaints that the lower occupants had turned off the breaker on September 28, 2013;
- Complaints that they have had no heat for two months on November 4, 2013 – this email also notes that the tenants do not find the landlord's "excuses that you are 'away' when we call or email" to be acceptable and request that the landlord fulfil their obligations to provide an emergency contact number;
- Complaints that the lower occupants caused a disturbance at 2:00 a.m. dated January 8, 2014 at 2:25 a.m., including sounds of a violent fight the previous morning and subsequent response from the landlord dated January 12, 2014 indicating the landlord is out of town until January 25 at which time she will deal with the matter;
- Request from the tenants for an update on what the landlord had done about their complaints, dated February 7, 2014;
- An email response to the February 7, 2014 email in which the landlord stated she will make a decision "as to how to deal with this situation before Feb 15 and will let you know what I have decided." The landlord also stated that she had received a complaint from the lower occupant that the tenants were smoking in their rental unit; and
- Additional emails between the parties over the incidents of February 7 to 9 where the tenants submitted more complaints of the lower occupants' behaviour.

The tenants have submitted a substantial volume of other emails throughout February and March 2014 complaining of increasingly unsettling behaviour of the lower occupants including the tenants being threatened and the power being turned off by the lower occupants.

The tenants submitted that as a result of these final actions on the part of the lower occupants the tenants no longer felt safe living in the rental unit. Despite having

previously started sleeping in the living room of their unit they were no longer getting adequate sleep and their child was afraid to sleep in her own bedroom.

The landlord's agent did not dispute that there was an escalation in the lower occupant's aggressive behaviour.

The tenants moved back into the rental unit on April 8, 2014. The tenant was not sure when the lower occupants moved out. The landlord stated that the lower occupants had vacated the rental unit, at least partially by April 4, 2014. The tenants then also vacated the rental property by the end of April 2014.

The tenant stated that the heat had been turned off by the lower occupants when the vacated the residential property and the landlord wanted the tenant to go into the lower rental unit and turn it back on. The tenant submitted that they were not prepared to go into the lower unit to do so for fear that the lower occupant could return while they were in it and because it was the landlord's obligation to ensure there was heat.

In support of their submissions the tenants have also included email correspondence with local police and copies of police records of complaints made by the tenants to police for relevant periods of this claim.

The tenants seek compensation for the landlord's failure to deal with these issues in a timely manner as follows:

Description	Amount
Rent rebate of 70% for the period March 2013 to March 2014. The calculation is based on rent in the amount of $1,475.00 for the period of March 2013 to October 2013 and $1,530.00 from November 2013 to March 2014.	$13,576.50
Additional rebate for the period of April 1, 2014 to April 7, 2014.	$357.00
Compensation for alternate accommodation for the period of March 11, 2014 to April 6, 2014	$2,120.62
No heat for 30 days in the fall of 2013 and 8 days in April 2014 at $20.00 per day	$760.00
Total	$16,814.12

The landlord submitted that both of the sets of occupants on the property had complained about each other. The landlord's agent stated that when one occupant complained about the other the landlord would look into it and advise them that they needed to work it out or the landlord would have to take action against either one of them.

The agent went on to say that after these interactions the landlord would not hear from either sets of tenants for a month or two and figured the tenants had worked things out amongst themselves.

Specifically, the agent submitted in July 2013 when the landlord had investigated the tenants' complaint about the lower occupants she received a complaint from the lower occupants about the tenants. The agent submitted the landlord informed both sets of occupants at that time that they had to learn to get along with one another and gave them until the end of July 2013 to come up with an agreement on how they were going to proceed into the future. The landlord's agent confirmed that the landlord did not follow up with either tenant at the end of July to see if they had come to such an agreement.

The agent also submitted that the landlord did in fact respond to the tenants' complaint to her about the disturbance at the birthday party in April 2013. He stated that the landlord informed the tenants to call the police. The agent submitted that the landlord heard nothing from either set of occupants until July 2013 so she thought things had settled down. The agent submitted that the landlord had contacted police and found there was nothing on record. The agent did not indicate any follow up between the landlord and either set of occupants.

In support of their position the landlord submitted into evidence email correspondence between the landlord and the tenants confirming a complaint from the tenants on July 1, 2013 and the landlord's response.

In the July 2, 2013 response the landlord wrote:

> "My plan is to allow both of you to try and work out your differences by the end of the month. If you both cannot come to an agreement I have no choice but to evict one of you. I will call Pamela and let her know of my plan. I sincerely do hope you both can work things out."

The landlord also included in evidence the tenants' response to the landlord's email of January 12, 2014 in response to the chain of emails starting on January 8, 2014. The response from the tenants stated:

> "Thanks for your reply. We really wish this was not happening. We love our home very much and just want a peaceful place to come home to and to get a decent sleep at night. Take care."

The landlord's agent submitted that this response indicated that the tenants were content with the landlord not responding any sooner than January 2014 and that the tenants did not see that there was a need for urgent action on the part of the landlord.

The landlord has also submitted a copy of a handwritten complaint dated July 4, 2013 from the lower occupants and a note from the lower occupants' mother also dated July 4, 2013. The lower occupants' letter includes the following assertions:

- The upstairs tenants' complaints are unreasonable;
- The upstairs tenant informed the lower occupants that a common area belonged to the upstairs tenants;
- Disputing that they had smoked in the rental unit;
- The upstairs tenants "constantly asking us to turn down our TV;
- The upstairs male tenant just enters their rental unit without knocking;
- The upstairs female tenant "tells me to turn down the fan";
- The upstairs female tenant asks to turn down the music in the morning;
- The upstairs male tenant tells the lower occupants they must live by his schedule;
- General complaint about children running around, bouncing balls, and slamming doors; and
- Other miscellaneous complaints.

The agent submitted that because both sets of occupants were complaining about each other the landlord could not determine who she should evict. In response to why it took so long for the landlord to contact the tenants in response to their complaint of January 8, 2014 the agent stated the landlord had wanted to speak to the police officer involved prior to determining anything and he was away from the time she returned on January 25, 2014 until February 8, 2014.

There was no indication, either through testimony or documentary evidence that the landlord even attempted to contact the tenant, after she returned on January 25, 2014, regarding the tenant's complaint of January 8, 2014 until after the tenant sent the landlord another email on February 7, 2014.

The agent submitted that the landlord issued a 1 Month Notice to End Tenancy for Cause to the lower occupants by February 15, 2014. The agent could not provide any testimony as to why the landlord finally decided she should evict the lower occupants instead of the tenants. The lower occupants filed an Application for Dispute Resolution seeking to cancel that Notice and a hearing was set for April 14, 2014.

Email correspondence between the landlord and the tenant shows that the landlord intended to submit an Application for Dispute Resolution after events on the night of March 11, 2014 and the morning of March 12, 2014. The landlord's Application was received by the Residential Tenancy Branch on March 17, 2014.

The tenants had reported in an email to the landlord on March 12, 2014 that: "5 police officers have just removed Pam and taken her somewhere (we were told they tried to take her to a shelter but the shelter refused to accept her so they are looking for somewhere else). Grant is MIA…."

However, the agent stated that after the hearing of March 25, 2014 where the Arbitrator determined that landlord would have had sufficient cause to end either tenancy, the landlord issued the tenants a 1 Month Notice and they vacated the rental unit by the end

of April 2014. The tenant denied ever receiving a 1 Month Notice to End Tenancy for Cause from the landlord but rather they vacated the unit by their own notice to the landlord. Neither party provided a copy of any notice to end tenancy issued by either party.

Analysis

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

From the evidence and testimony submitted by both parties and in consideration of the March 25, 2014 decision I find that there is sufficient evidence to confirm that the lower occupants of the residential property caused unreasonable disturbances for the tenants.

I also find, based on the tenant's records of emails and other documentation that the tenants submitted many complaints to the landlord about the lower occupants. Despite the large numbers of emails submitted by the tenant, I find there is little documentary evidence that the landlord did respond, until the beginning of February 2014.

I find the landlord has failed to provide much in the way of documented evidence of the landlord's responses to the complaints with a few exceptions: the response to the tenant's complaint of July 1, 2013 and the escalation of the eviction process beginning in early February 2014.

I find the landlord has failed to provide any evidence to show what steps they took to investigate the complaints of either the upper or the lower occupants. For example, the landlord indicated, in an email dated March 11, 2014, that: "As per all the situations that have gone on, it's been their (Pam and Grant's) word against yours."

I find this indicates that the landlord did not do any substantive investigation into the complaints made by the tenants, other than to speak to the lower occupants. The landlord has provided no testimony of how they investigated such as reviewing any previous complaints against the tenants from previous lower occupants (if applicable); contacting the police or if they did how it impacted their approach, the tenants had reported the lower occupants on several occasions.

I find that part of the letter of complaint from the lower occupants is an attempt by the lower occupants to deflect blame from themselves to the tenants. I find that the letter also confirms that the tenants were attempting to work things out with the lower occupants by trying to advise them when their TV or music was too loud. The lower occupant even provided an explanation as to why they played them loudly – because of her disability.

I also would expect that the landlord would have followed up on the outcomes after their warnings to the tenants and the lower occupants that they had to come up with an agreement or she would evict one of them.

I find that it is insufficient for a landlord, to meet their obligations under Section 28, to simply pass of the responsibility to tenants and then never follow up to determine if there are continuing problems. It is the landlord's obligation to ensure that all occupants in the residential property comply with the requirements to not disturb other occupants. By telling the tenants it is up them to work it out, I find the landlord is attempting to skirt their responsibilities.

Further, I find that after receiving complaints from the tenants for over six months the landlord's response that she will deal with another complaint 2 weeks later when she returned from being out of town is not a reasonable response. I find it particularly egregious that the landlord then failed to do nothing at all until the tenants requested an update on February 7, 2014, another week and a half later.

While the landlord's agent submitted that she was waiting to speak to a police officer who was away at the time, I find that doing nothing else at all during the period from January 25, 2014 and February 7, 2014 after the extensive complaints confirms the landlord was treating these issues as insignificant.

I also find that the landlord then just put off making a decision on what she intended to do until February 15, 2016 with no explanation or indication why she had chosen that date to make a decision confirms the landlord treated these issues lackadaisically.

Based on the above, I find that the landlord did not take adequate steps to deal with the complaints of the tenants in a timely or appropriate manner. I find the tenants have established that they began reporting disturbing instances caused by the lower occupants beginning in March 2013.

I find that the landlord's inaction confirms the landlord did not comply with their obligations under Section 28 of the *Act* to ensure the tenant's quiet enjoyment of their rental unit.

I also find that the tenants have provided sufficient evidence to show that the disturbances experienced by the tenants increased in their frequency and severity. I find that despite being made aware of these issues the landlord's failure to respond in a timely manner had contributed to the escalation of the problems that led to the need for the tenants to temporarily relocate after the events of March 11 and 12, 2014.

Based on the above, I find the tenants are entitled to compensation for a loss of quiet enjoyment in the rental unit and for the costs they incurred to secure alternate accommodation during the period of March 11, 2014 to April 6, 2014.

I find the tenant's suggested compensation at 70% of the rent per month for the period is excessive and does not reflect accurately the benefits of the rental that the tenants still enjoyed. I find for the months of March 2013 to March 2014 the tenants are entitled to compensation in the following amounts:

Description	Amount
50% of $1,475.00 for 8 months (March 2013 – October 2013)	$5,900.00
50% of $1,530.00 for 4 months (November 2013 – February 2014)	$3,060.00
100% of $1,530.00 for 1 month (March 2014)	$1,530.00
Alternate accommodation	$2,120.62
Total	$12,610.62

While I have determined the tenants, for the most part, are entitled to compensation equivalent to 50% of the rent paid each month during this period, I also find that the tenants are entitled to 100% of their rent returned for the month of March 2014. I have made this determination based on my findings above that the landlord contributed to the escalation of unsettling behaviour of the lower occupants that required the tenants to find alternate accommodation during the month of March 2014.

Additionally, while the tenants had provided in their submissions that they had not reported all of the incidents of disturbance I find the evidence does not support a claim for 70%. I find the evidence they have submitted, in relation to the time in the unit, does provide justification for a rent abatement of 50% as described above.

Section 32(1) of the Act states a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the testimony of both parties I find the tenants have established that they had gone without heat for the period of time claimed. I also find that the landlord failed to respond to the tenant's complaints about heat in a timely manner. I find the tenants are entitled to compensation. I find that the claim for $20.00 per day for 38 days to be reasonable for a total compensation of $760.00

In regard to the tenant's obligation to mitigate any losses, I find the tenants submitted complaints to the landlord as soon as possible, either during or after an event. As such, I find the tenants took the reasonable steps available to them. While I noted above that the March 25, 2014 Decision might warrant consideration on the issue of mitigation, I find there is nothing in that decision that is relevant to mitigation.

Conclusion

In accordance with the February 10, 2015 Supreme Court of British Columbia decision and pursuant to Section 62 of the *Act*, I order the original decision and order issued on May 13, 2014 be set aside.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$13,570.62** comprised of $12,610.62 rent abatement; $760.00 failure to provide heat; and the $100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 16, 2016

Residential Tenancy Branch