Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Suanzi Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

During the course of the hearing the tenant withdrew the application for an order reducing rent for repairs, services or facilities agreed upon but not provided.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the landlord be ordered to make repairs to the unit, site or property?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for loss of quiet enjoyment, continuous unsafe rental, and aggravated damages?

Background and Evidence

The parties agree that this verbal month-to-month tenancy began in 2012 and the tenant still resides in the rental unit, which is a cabin. Rent is $400.00 per month.

The parties also agree that a hearing was held by the director, Residential Tenancy Branch on July 7, 2015 concerning the tenant's application for monetary compensation, among other relief. A copy of that Decision has been provided for this hearing, and it

states, in part: "Pursuant to sections 67 and 72 of the Act the Tenant will receive a monetary order for the balance owing as following:

Loss of generator:	$251.91
Loss of the door (safety issue)	$400.00
Loss of quiet enjoyment & damages (due to the loss of the door)	$3,400.00
Temporary door repair expenses	$33.23
Restricted access to the unit	$450.00
Loss of quiet enjoyment & damages (due to the restricted access)	$450.00
Recover filing fee	$100.00

The Decision of the director also determined that the landlord had a responsibility to replace the door of the rental cabin, and ordered that the tenant not pay any rent until the landlord had done so. It also specifies that the $3,400.00 award for loss of quiet enjoyment due to loss of the door is calculated on a per diem basis of $100.00 from June 3, 2015 to July 7, 2015, the day of the hearing. The awards for restricted access to the unit and loss of quiet enjoyment for restricted access are also on a per diem basis.

The parties appeared before me on April 7, 2016 in a dispute resolution hearing concerning the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. My Decision was provided to the parties, but neither party had received it prior to this hearing. My Decision dismissed the tenant's application to cancel the notice to end the tenancy and provided an Order of Possession in favour of the landlord effective April 30, 2016 at 1:00 p.m., the effective date contained in the notice.

The tenant testified that the landlord did not adhere to the July 7, 2015 order, and the tenant seeks aggravated damages. The tenant was ordered to not pay rent until the door was put back onto the rental unit because the landlord refused to fix it as a way to evict the tenant. The tenant has provided a Monetary Order worksheet setting out additional monetary claims since the July 7, 2015 order was made:

- $5,800.00 for breach of Section 28, loss of quiet enjoyment;
- $11,600.00 for breach of Sections 31, 32, 33 and Policy Guideline #16 – continuous unsafe rental; and
- $5,800.00 for continuous breach, aggravated damages, stress and duress.

The landlord still has not replaced the door to the rental unit. The tenant had a temporary linen-type of door installed prior to the July 7, 2015 hearing, for which the tenant was awarded recovery costs. However, the tenant has been residing in an unsafe rental unit for 9 months. For 2 months during the winter the tenant wasn't able to stay in the rental unit. It wasn't warm enough to be in there, and the tenant had to use more fire wood. The tenant sent letters to the landlord in August and September requesting the repair, copies of which have been provided, and the tenant paid rent in good faith in August, 2015 even thought the Arbitrator said the tenant didn't have to.

The tenant testified that the amounts claimed are a per diem amount identical to those ordered by the Arbitrator at the July 7, 2015 hearing, and the tenant's claims are from the day after the July hearing, being July 8, 2015 to March 1, 2016. The claim for loss of quiet enjoyment is at $25.00 per day; compromised access to the rental unit and loss of quiet enjoyment is $50.00 per day; and aggravated damages at $25.00 per day, for a total of 232 days. The tenant claims unnecessary stress, duress, hardship and unsafe living conditions due to the landlord's failure to comply with the *Act* and the Decision of the director. The tenant only wanted the landlord to put the door back on.

The tenant further testified that the landlord was on the property 5 times doing some land clearing to intimidate the tenant and force the tenant to move out.

The landlord testified that at the hearing in July, 2015 the Arbitrator asked the tenant how long she would like to stay in the rental unit and the tenant said 3 months, which should have ended in October, 2015, but the tenant is still there. The landlord agrees that the tenant didn't live there for 2 months during the winter, but denies any loss of quiet enjoyment.

Moving forward, the tenant wanted the door replaced, but called police who told the landlord to stay away until the tenant moved out, so the landlord can't even go there. He didn't hire a contractor to do so, testifying that he built the cabin and didn't want to hire someone else to do it. He thought the tenant was going to move out.

With respect to moving debris, the landlord testified that the tenant rented a cabin, not the 12 acres, and the landlord completed debris removal last year at the common access area, but not this year on the rental lot. The rental lot is 104, and the landlord completed work on lots 103, 105 and 106, and stated that the tenant likely doesn't know where the property lines are. There were never 5 land clearings done on the rental property.

The landlord has also provided a copy of an email dated May 4, 2015 from the tenant to the landlord informing the landlord that the tenant will not be paying any rent as of June

1, 2015 and for as long as the tenant resides in the rental unit. The email goes on to say: "Please note that when I decide to leave my residence at cabin lot #104, if I end up leaving under duress or stress, all of your illegal cabin rental tenants will be leaving with me, as I will draft and send a letter to (the Regional District) letting them know that I will no longer sue them for damages based on my existing complaint held on file with (the Regional District). I will continue to expect you to perform maintenance on my cabin as needed, provision of wood, shovelling of snow and to be treated fairly should I continue to reside at cabin lot #104…. Please note that this is non-negotiable." The landlord testified that the tenant's claim is black-mail.

Analysis

Since the tenancy is ending on April 30, 2016, I decline to order that the landlords make any repairs to the rental unit, and the tenant's application in that regard is hereby dismissed.

The *Residential Tenancy Act* states that where a party fails to comply with the *Act* or the tenancy agreement, the aggrieved party may make an application for monetary compensation, and the aggrieved party must do whatever is reasonable to mitigate any loss or damaged suffered as a result of that failure. The tenant has provided copies of letters sent to the landlords requesting attention to the cabin, which was ignored by the landlords.

There is no dispute that the tenant has already received an order for monetary compensation, and I accept that the amounts claimed by the tenant were taken from the July 7, 2015 Decision, however, I am not bound by those amounts. I also accept that this application is for additional aggravated damages since the making of that order. However, a portion of the tenant's application before me is with respect to unnecessary noise and disturbances by the landlord clearing debris. The landlord testified that the only clearing done since the making of that order was on other adjoining lots, and the tenant didn't dispute that. Whether or not it was done to further aggravate the tenant is not clear, and therefore not proven.

It totally baffles me why the landlord would refuse to put the door back on knowing that no rent would be paid until he did so. Even if the landlord believed the tenant would move out within 3 months as he testified that the tenant told the Arbitrator in the July, 2015 hearing, the landlord still lost an additional $400.00 per month in rental income for those months and additionally to date. Although the July, 2015 Decision does not order the landlord to put the door back on, I find that the landlord deliberately refused to so in an effort to have the tenant move out of the rental cabin regardless of the monetary consequences. The parties have a contract, and both parties are required to carry out

the terms of that contract. In the circumstances, I am satisfied that the tenant has established a claim for breach of the tenant's right to quiet enjoyment of the rental unit in the amount of $5,800.00 and aggravated damages in the amount of $5,800.00.

Conclusion

For the reasons set out above, the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed as withdrawn.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $11,600.00.

This order is final and binding and may be enforced.

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: April 22, 2016

Residential Tenancy Branch