



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O OLC MNDC

Introduction

This hearing dealt with the tenants' 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 and an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Are the tenants entitled to monetary order for compensation for damage or loss?
Are the tenants entitled to an order requiring the landlord to comply with the *Act*?

Background and Evidence

This tenancy began on April 1, 2013 and continues as a month to month tenancy. Both parties agreed that there is no written tenancy agreement relating to this tenancy. Both parties agreed that the rental amount of \$1025.00 is payable on the first of each month and that the landlord continues to hold a \$512.50 security deposit paid by the tenants at the outset of this tenancy.

The tenants sought \$2500.00 for "harassment" by the landlord. The tenants testified that, on more than one occasion, their neighbour who they describe as the manager of the building ("Mr. C") yelled at them and/or swore at them. The tenants testified that, on at least one occasion, the landlord was present when the manager yelled at them and the landlord took no steps to address the situation. The tenants testified that they complained to the landlord several times with respect to the manager but that the

landlord refused to speak to the manager. The tenants detailed approximately six distinct occasions where the tenants claim they were harassed by Mr. C. The tenants testified that they believe the landlord is party to the harassment. However, they submit that regardless of whether the landlord is directly harassing them, he is responsible for the harassment at the hands of Mr. C.

At the hearing, the landlord testified that Mr. C was not “actually” a manager but that Mr. C and his wife do a variety of odd jobs around the premises. A statement by Mr. C submitted as evidence for this hearing includes his description of himself as the “assistant-manager” for the landlord. The landlord testified that Mr. C’s wife is paid by the landlord and therefore he has no ability to restrain or control Mr. C. A witness testified on behalf of the tenants that she has been present on an occasion when Mr. C has attended to the tenants’ rental unit, yelling and swearing at them. The tenant M testified that Mr. C kicked his dog on one occasion and that Mr. C has made threatening comments to both of the tenants including to “watch their back”.

The landlord testified that these tenants are very difficult to deal with and that their claims are fabricated. He did not deny that the tenants and Mr. C have had altercations and disputes but he denies any responsibility for resolving or addressing those disputes. The landlord testified that he cannot be responsible for arguments between tenants. He also stated that he believes the tenants are the instigators in these disagreements.

Analysis

The tenants rely on section 28(b) of the *Act*: a tenant’s right to quiet enjoyment.

28 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 rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants submitted that the landlord is ultimately responsible for their lack of quiet enjoyment. The tenants submitted that whether the landlord is actually creating the

disruption to the enjoyment of their residential premises or whether another resident is creating the disruption, the landlord has a responsibility to address the matter. Residential Tenancy Policy Guideline No. 6 explains “quiet enjoyment”,

At common law, the covenant of quiet enjoyment “promis(es) that the tenant . . . 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 the tenant’s right to freedom from serious interferences with his or her tenancy. **(emphasis added)**

Policy Guideline No. 6 also provides that

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

The tenant’s right is a right to freedom from serious or significant interference with his tenancy. The standard for an arbitrator to apply in determining whether the interference with the tenant’s quiet enjoyment was significant enough is whether it was significant enough to warrant an end to the tenancy, regardless of whether the tenants chose to vacate the rental unit. In this case, the tenants testified that they continue to reside in the rental unit but only because they have failed to find suitable accommodations elsewhere. The tenants both testified that they have a young child and they are uncomfortable with continuing to reside within the residential premises but that they have lived in this residence since 2013 and do not wish to leave their family home if this matter can be resolved.

The tenants made an application and a claim that the landlord both by Mr. C’s and his own behavior, the tenants have been harassed and suffered a loss of quiet enjoyment. As this is the tenants’ application, it is their burden to show that each of them suffered a loss through evidence submitted to the arbitrator. I find that their testimony regarding interactions with Mr. C is not disputed by the landlord; he merely disputes whether he is culpable for the actions of Mr. C.

While there is some conflicting testimony from the landlord and the tenants as well as the tenants’ witness, an initial determination regarding the credibility is only the first consideration in this matter. I note that the manner and tone (demeanour) of the testimony of both tenants as well as the supporting testimony of their witness was candid and calm in its delivery, despite the emotional nature of the harassment as

described by the tenants. I have considered the content of the submissions and testimony of the tenants and I find that their testimony is consistent with each other as well as consistent with their witness. Furthermore, the landlord's testimony regarding disputes with Mr. C does not contradict the evidence of the tenants.

Policy Guideline No. 6 defines 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.

I find that the description of the ongoing animosity, threats and activity by Mr. C can be considered harassment in these circumstances, both as described by the tenants and their witness and not disputed by the landlord become increasingly serious, including but not limited to harm to their family pet and threats to their persons.

I also find that the landlord is culpable for the actions of Mr. C in that Mr. C acts as an agent for the landlord in a variety of roles. I find that the actions and behaviour by Mr. C have gone beyond normal disputes between neighbours and the nature of common and shared residential living. I find that the landlord was notified of the problem and failed to take reasonable steps to correct it. The tenants provided undisputed testimony that they spoke to the landlord regarding their issues with Mr. C. The landlord testified that he witnessed and was aware of acrimonious interactions between the two neighbours. I accept the testimony of the tenants and their witness with respect to the nature of the harassment and loss of quiet enjoyment suffered as a result of the behaviour of Mr. C towards the tenants and their family.

The burden of proof falls to each tenant to show that they have suffered a serious loss of quiet enjoyment. I accept the tenants' testimony regarding harm to their family pet and threats to their persons as well as impact on their ability to feel safe and secure in their comings and goings from their own residence with their child. I find that the tenants have provided sufficient evidence to establish on a balance of probabilities that their quiet enjoyment was significantly or substantially affected. I find that the tenants have provided insufficient evidence to determine the particulars of any loss beyond temporary annoyance or inconvenience. I find that the tenants are entitled to a nominal monetary award to reflect the loss of quiet enjoyment in the amount of \$1000.00.

Conclusion

I issue a monetary Order in favour of the tenants in the amount of \$1000.00.

The tenants are provided with formal Orders in the above terms. Should the landlord fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 13, 2016

Residential Tenancy Branch