



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC RP RR

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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order to the landlord to make repairs to the rental unit pursuant to section 33; and an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

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

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to the return of his security deposit?
Is the tenant entitled to an order requiring the landlord to comply with the *Act*?
Is the tenant entitled to an order to the landlord to make repairs to the rental unit?
Is the tenant entitled to an order to allow the tenant(s) to reduce rent for repairs?

Background and Evidence

This tenancy began in August 2008. The current rental amount of \$550.00 is payable on the first of each month. There was no security deposit paid with respect to this month to month tenancy. A residential tenancy agreement was submitted as evidence in this matter.

The tenant testified that he has two children with special needs. He testified that he chose his current housing location based on meeting the needs of his children. He testified that he chose a 3 bedroom duplex with accessible yard space. He testified that the backyard was hazardous to use because of a dilapidated fence bordering the property. He testified that he has been asking that the landlord repair or replace the fence for two years. He testified that shortly before this hearing, the landlord replaced the fence but that, for the two years that it was in disrepair, it was not safe for his children to use the yard.

During his testimony, the tenant referred often referred to conversations with the previous resident manager for the property. He indicated that the previous resident manager requested his assistance in preparation for the fence repair. The tenant submitted photographs of the fence. The photographs showed a fence tipping over slightly, with rough exposed broken edges and nails sticking out of it.

The tenant sought compensation for the ongoing failure of the landlord to repair the fence and, as well, for compensation for the noise of his neighbour. He testified that the neighbour is loud later in the evenings when he and his children are trying to sleep. The tenant submitted approximately copies of 7 letters of complaint to the landlord. Those letters made ongoing reference to noise complaints about one particular neighbour and generally about people using drugs and creating noise on the property late at night. The tenant sought an order that the landlord post a sign imposing a curfew with respect to noise. The tenant said he based his compensation amount on a \$25.00 per month for noise and a \$45.00 per month for loss of use of the backyard in making his claim.

The landlord testified that the fence was completed on July 22, 2016. He submitted that the fence wasn't really a safety hazard and that they were merely upgrading the fencing in certain areas. He testified that there were fences in the complex in far worse condition than this tenant's fence and therefore the tenant's fence was addressed after the worst fences had been repaired.

The building manager testified that it was June 2015 before the issues of the fence were brought to the attention of the landlord by the tenant. He testified that the fences had been in "rough shape" for some time but that there was no money in the budget for repairs. He testified that the tenant complains frequently. He testified that the tenant came to the office on several occasions to complain about the fence as well as about his neighbour and noise.

The property manager testified that the fence had fallen down in several tenants' yards. He testified that the first step they took was to raise the fences back up and then they

were repaired. He testified that the tenant's fence was not a "top priority" as other fences were far more damaged than his. The property manager said that the tenant and his neighbour constantly argue. He testified that the neighbour has been cautioned verbally and in writing regarding the noise level and that the landlord is attempting to mediate the matter between the two tenants.

Analysis

When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. If a landlord fails to meet his obligations and a tenant is subsequently deprived use of a part of their premises, the tenant may be entitled to damages in the form of rent abatement or a monetary award. In consideration of the tenant's monetary request for compensation for the unaddressed repairs to the fence on the residential premises, I refer to Policy Guideline No. 6 regarding the right to "quiet enjoyment" including but not limited to a right to freedom from unreasonable disturbance,

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

When considering whether there has been a breach of a tenant's right to quiet enjoyment, I must consider whether the landlord has created or allowed a substantial interference to the tenant's enjoyment of their premises. Temporary inconvenience does not constitute a breach of quiet enjoyment however an interference that would give the tenant sufficient cause to end the tenancy would constitute a breach of quiet enjoyment. However, a tenant does not have to end a tenancy to show that there has been such interference. Policy Guideline No. 6 provides the following,

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In this case, I find that the landlord has not made *sufficient* efforts to minimize the tenant's disruption or inconvenience with respect to the dilapidated fencing. I accept the testimony of the tenant that the fence has been in disrepair for two years. I find that the landlord representatives at this hearing did not have sufficient evidence to rebut the tenant's claim about the timeline of the fence given that they were not working on site at that time and there was no evidence of useful records left for them. I find that the state of the tenant's unit and the effects upon him and his children are beyond nuisance as they have general health implications as well as specific effects on this particular tenant (and his children).

The tenant has shown through his documentary evidence (including complaint letters) and undisputed testimony that he has repeatedly requested the landlord's assistance in addressing the need to repair his fence. Repairing facilities on the premises, particularly in the yard on the residential premises is an obligation of the landlord. Under section 32(1) of the *Act*, a landlord is required to provide a residential property in a state of repair that complies with health, safety and housing standards under the law and having regard to the character of the rental unit, make it suitable for occupation by the tenant. Based on the evidence before me, the tenant met his legislated obligations and mitigated his damages by keeping the children in other play areas, taking extra precautions when the children were around the fence and requesting repairs to the landlord. The tenant is entitled to compensation for the long outstanding repairs.

Based on the testimony and materials of both parties, I find that the landlord is addressing the issue of noise by the tenant's neighbor. The evidence shows that they have maintained contact with the tenant to keep him informed, they have met with both parties involved and they have issued warnings to the neighbor. With respect to the outside evening noise, there is insufficient evidence that these noises are created by tenants within the building and, further, there is no evidence that a sign would impact the individuals outside in the evening. I find that the landlords have limited control over this disturbance to the tenant and that the tenant may have to access other resources in addressing that particular problem.

Based on the tenant's testimony and the documentary evidence, I find the landlord did not meet his obligations under the *Act* to address the safety issue as a result of the dilapidated fence. The tenant must also provide evidence of his loss. He testified that he and his children have lost use of the yard. He provided evidence and testimony that this situation has been ongoing for 2 years. He testified that outside time is essential to his children's care and that he has made every effort to have the fence addressed and repaired. I accept the tenant's testimony that he was unable to take pride in his residential premises or use it for the purposes he intended on choosing this residence. I

note that the fence is now repaired but I find that the landlord took at least 18 months to complete the repairs.

If a tenant is deprived of the use of all or part of the premises, or when the tenant's right to quiet enjoyment has been impacted, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlord failed to honour the residential tenancy agreement and their obligations under the *Act* by failing to repair the fence in a timely manner. I find that the tenant has shown a substantial loss in the use of his unit - his right to quiet enjoyment and use of his yard - warranting compensation. Therefore, I find that the tenant is entitled to a nominal damage award in the amount of \$1000.00.

The landlord has repaired the fence so there is no need to order the landlord to comply with the *Act* or make repairs.

Conclusion

I issue a monetary order to the tenant in the amount of \$1000.00.

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: October 7, 2016

Residential Tenancy Branch