



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Russel Place Home
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to comply with the Act, regulation or tenancy agreement and a monetary order. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

Issue(s) to be Decided

- Should a monetary order be made in favour of the tenant and, if so, in what amount?
- Should any other order be made and, if so, on what terms?

Background and Evidence

The tenant has lived in this building for 18 years. He loves the building, the view from his unit and its proximity to public transport.

The rental unit is a bedroom and private bathroom. There are communal cooking facilities available but the tenant does not use them. The monthly rent is \$375.00 and is due on the first day of the month.

When the tenant first moved into the building it was a privately owned hotel. Seven years ago it was bought by BC Housing and is operated by a non-profit group. Of the 56 units in the building, 40 are housing units and 16 are shelter rooms.

It is acknowledged that this building is old with very thin walls. The landlord's witness testified that most efforts to reduce the volume of noise and the ease with which noise travels have been unsuccessful.

When the ownership of the building changed so did the operating philosophy and the tenant profile. A large proportion of the tenants have issues with alcoholism, addictions

and/or mental health. The landlord's goal is to keep people off the street. The landlord operates on a harm reduction model and describes the building as low barrier housing.

The tenant is 63 years old and one of the few residents of the building who is employed. He works in residential landscaping four days/ week, ten months of the year and has done so for twenty years. His intention is to keep working for a few more years. His work hours are 8:00 am to 4:00 pm. He has a long commute so is usually up around 6:00 am.

The tenant is having trouble with his new next-door neighbour who arrived in June 2016. The neighbour is drunk most of the time. He has company frequently, including over night guests, and sometimes leaves his guests unattended in his rooms while he goes out, both of which are against the building rules. Both the neighbour and his company are noisy; often until late at night.

Since the neighbour moved in the emergency door is propped open two or three times a week. The tenant checks the emergency door when he comes home from work and shuts it when necessary.

Many nights the neighbour passes out with the television left on. When the tenant complains to the building management they go up to the neighbour's room and knock on the door. If the neighbour does not wake up and answer the door, management cannot do anything else. The landlord's witness testified that they are not allowed to enter a tenant's room without that tenant's permission. If a tenant is loud and they cannot gain entry they suggest that the complaining neighbours call the police. The same situation exists if the neighbour goes out leaving his television on.

Sometimes the tenant will bang on the wall and yell at the neighbour to turn off the television. His neighbour is not always that co-operative.

The neighbour has a habit that is particularly irritating to the tenant – he repeats the “YUP” frequently and loudly. The tenant testifies that once he counted 100 YUPs in an hour.

The tenant has written several letters of complaint to the landlord about the situation, as has the person who lives on the other side of the neighbour. The landlord testified that the neighbour has been given numerous warning letters about noise but he did not know if any other action had been taken or was being contemplated by the residential supervisor.

The tenant testified that his neighbour has been taking actions that appear to be aggressive or retaliatory such as increasing the volume of his television, deliberating saying “YUP” as often and as loudly as possible; and challenging the tenant with “What are you going to do about it?”

The landlord’s witness testified that he lived and worked in the building when it was a private hotel and he has known the tenant for many years. He described the tenant as a good tenant and said he had no reason to doubt the tenant’s testimony.

The landlord’s witness testified that:

- They generally do not evict tenants except for non-payment of rent or for violence.
- They have never evicted someone for being loud.
- It is difficult to find a quiet resident to live beside the tenant.
- Even if they could, they do not like to do internal transfers because it results in a loss of income.

The tenant testified that the landlord did approach him about a transfer to another building operated by it. He said that the other building is further from transit and he may not have a very nice view. More importantly his rent would change in the future because he is employed. After the first twelve months his rent would be 30% of his income, which would result in a substantial increase from the guaranteed rent he pays in this building. The landlord’s witnesses did confirm that if the tenant was working he would have to pay a percentage of his income as rent.

The landlord’s witnesses described the other building as newer and more sound proof with the same mix of tenants as this building but in general a little quieter population.

The witness who had lived and worked in this building while it was a hotel described the atmosphere in the building as loud and chaotic. He concluded his evidence by saying that “I wouldn’t want to live here now.”

Analysis

The tenant’s claim is for loss of quiet enjoyment. A summary of the relevant law is set out in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment*.

The *Guideline* explains that every tenancy agreement contains an implied covenant of quiet enjoyment. One of the elements of quiet enjoyment is freedom from unreasonable disturbance. If a landlord stands by while others, including other tenants, engage in

conduct that represents frequent and ongoing interference with the tenant's right of quiet enjoyment their inaction may form the basis of a claim against them.

When the tenant rented this unit he was promised and was provided with a certain level of quiet enjoyment. When the building was sold the tenancy agreement continued on and the purchaser assumed all of the landlord's obligations under it. By changing the manner in which the building is operated the landlord has effectively changed one of the terms and conditions of the tenancy agreement without the tenant's consent. This is contrary to section 14(2) of the *Residential Tenancy Act*.

I find that the tenant's right of quiet enjoyment has been reduced by his neighbour's behaviour and the evidence presented by the landlord's witnesses does not show that it has done much to address the situation.

Section 7(2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

The landlord did offer the tenant a different place to live. However, I accept the tenant's evidence that the accommodation offered will be less convenient and within a fairly short time will be substantially more expensive. I find that he was justified in refusing the offer.

The *Guideline* directs arbitrators who are determining the amount by which the value of the tenancy has been reduced to take into consideration the seriousness of the situation and the length of time over which the situation has existed.

After considering the relatively small size of the rental unit and the limited services provided to the tenant by the landlord I find that the value of the tenancy has been reduced by 20%, or \$75.00 per month.

I award the tenant the sum of \$450.00 as compensation for loss of quiet enjoyment for the months of June to November inclusive. I further order that the rent be reduced by \$75.00 per month until the next door neighbour is moved to another part of the building, moved to another building or is evicted.

As the tenant was successful on his application he is entitled to reimbursement from the landlord of the \$100.00 fee he paid to file it.

Pursuant to section 72(2) the tenant may deduct \$375.00 from the next rent payment due to the landlord. If the situation has been resolved by the following month, the

tenant may deduct \$175.00 from that month's rent in full and final settlement of this claim. If the situation is unchanged, the tenant may deduct \$250.00 from the second month's rent and then may deduct \$75.00 from each month's rent thereafter until the situation is resolved to the tenant's satisfaction or the landlord obtains an order from the Residential Tenancy Branch ending this deduction, whichever first occurs.

No other order will be made.

Conclusion

For the reasons set out above an order reducing the tenant's rent has been made.

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: November 18, 2016

Residential Tenancy Branch