



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated July 19, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return all or part of the security deposit and pet damage deposit.

The Tenants were represented at the hearing by the Tenant J.A.T. The Landlord was represented at the hearing by L.W. and D.L., its agents. All parties giving evidence provided a solemn affirmation.

On behalf of both Tenants, J.A.T. testified the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord, in person, in or about August 2016. The Landlord's agents initially acknowledged receipt of the Tenants' documentary evidence; however, during the hearing, they denied receiving some of the photographic evidence relating to the Tenants' forwarding address. However, for the reasons that follow, I find the Landlord has suffered no prejudice as a result and have considered the evidence as presented.

On behalf of the Landlord, L.W. testified the Landlord's documentary evidence was served on the Tenants by registered mail on January 5, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants are deemed to have received the Landlord's documentary evidence on January 10, 2017.

Both parties were represented at the hearing and were prepared to proceed. No further issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties each submitted into evidence a copy of the tenancy agreement between them. The agreement confirms the parties entered into a fixed-term tenancy for the period from July 1, 2015 to June 30, 2016. The agreement allowed the tenancy to continue on a month-to-month basis after the end of the fixed term. However, the Tenants vacated the rental unit and returned the keys to the Landlord on or about June 29, 2016, without providing notice to the Landlord. In any event, rent in the amount of \$980.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$490.00 and a pet damage deposit of \$490.00 at the beginning of the tenancy.

On behalf of the Tenants, J.A.T. provided oral testimony in support of the Application. First, J.A.T. submitted the Tenants were entitled to the return of double the security and pet damage deposits, or \$1,960.00. He testified he provided the Landlord with a forwarding address in writing on June 26, 2016. In support, J.A.T. referred me to a photograph of L.W. standing beside a desk while talking on a telephone. He submitted that a notepad on the table included his name, forwarding address and telephone number. Any writing that may have existed on the notepad was not legible.

In reply, L.W. testified the Landlord did not receive the Tenants' forwarding address at that time. Rather, she stated that the Landlord did not receive the Tenants' forwarding address until being served with the Tenants' Application.

Second, J.A.T. claimed to be entitled to compensation for loss of quiet enjoyment and loss of use in relation to balcony repairs which occurred in May and June 2016.

Specifically, J.A.T. testified the construction noise was particularly disruptive because the contractor set up a work station below his balcony. In addition, J.A.T. stated he was a stay-at-home dad with a young child and that the noise made time at home difficult. J.A.T. also claimed he and his family lost use of the balcony during construction, and that he should be compensated for that loss. Further, J.A.T. testified to his opinion the work on the balconies should have been completed in stages to cause less disruption.

In reply, the Landlord's agents testified that the repair work was necessary for safety reasons, and that the repairs were based on an engineering report.

Finally, J.A.T. claimed to be entitled to compensation for being harassed and demeaned by agents of the Landlord. Specifically, he advised he was served with notices to end tenancy that the Landlord should have known would not be successful. In addition, he testified that the Landlord's wouldn't accept his rent payments. J.A.T. stated he and his family were forced to leave the home they loved because of the treatment they received.

In reply, the Landlord's agents indicated the Tenants vacated the rental unit on June 29, 2016, without providing any notice, but were able to mitigate any associated losses.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Security Deposit. Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Upon receiving a tenant's forwarding address in writing, a landlord has 15 days to return the security deposit or make a claim against the security deposit or pet damage deposit by filing an application for dispute resolution. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, J.A.T. testified the Tenants provided the Landlord with a forwarding address on June 26, 2016. In support, he provided a photograph of the Landlord's agent standing beside a desk and talking on the phone. J.A.T. submitted his name, forwarding address, and telephone number were written on a notepad that appeared on the desk in the photograph. The Landlord's agents denied receiving the Tenants' forwarding address.

I find there is insufficient evidence before me to conclude the Tenants provided a forwarding address to the Landlord in writing on June 26, 2016. This aspect of the Tenants' Application is dismissed. However, the Tenants may yet provide a forwarding address to the Landlord in writing, in accordance with section 39 of the *Act*. On receipt, the Landlord is ordered to deal with the security deposit in accordance with section 38 of the *Act*.

Loss of quiet enjoyment. Section 28 of the *Act*, which protects a tenant's right to quiet enjoyment, states:

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.*

[Reproduced as written.]

Policy Guideline 6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

At the same time, a landlord has an obligation to repair and maintain rental property. Section 32(1) of the *Act* states:

A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

[Reproduced as written.]

In this case, J.A.T. testified he experienced a loss of quiet enjoyment and loss of use of his balcony during remedial work that was completed in May and June 2016. J.A.T. characterized his loss of use as a loss of exclusive possession. The Landlord's agents testified the work was completed for safety reasons, was based on an engineering report, and commenced with adequate notice to all tenants.

While I accept the Tenants experienced some ongoing noise and loss of use of the balcony during the repair and construction of the balconies, the Tenant's right to quiet enjoyment and use of the balcony must be balanced with the Landlord's obligations under section 32(1) of the *Act*, reproduced above. Although the Tenants were disrupted by the construction work, the Landlord had an obligation to make the repairs. Accordingly, I grant the Tenants the nominal sum of \$150.00 for loss of quiet enjoyment and loss of use of the balcony during the two months he and his family were impacted by the construction.

Harassment. I was not referred to any provision of the *Act* that would empower me to grant the Tenants compensation for being harassed or demeaned. However, I have considered this as an aspect of the Tenants' claim for loss of quiet enjoyment. Specifically, J.A.T. testified the Landlord's agents would not let him pay rent, and served him with notices to end tenancy the Landlord should have known had no chance of success. In support, the Tenants provided copies of several notices to end tenancy.

I find there is insufficient evidence before me to conclude the Tenants were harassed and demeaned by the Landlord's agents as alleged, or that these allegations would result in compensation for loss of quiet enjoyment. Accordingly, this aspect of the Tenants' Application is dismissed.

In light of the above, I find the Tenants have demonstrated an entitlement to a monetary order in the amount of \$150.00, pursuant to section 67 of the *Act*.

Conclusion

The Tenants are granted a monetary order in the amount of \$150.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 24, 2017

Residential Tenancy Branch