



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, O

Introduction:

A hearing was convened on January 17, 2017 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for “other”.

The Tenant stated that on, or about, July 19, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Landlord stated that he received these documents on August 27, 2016. As the Landlord acknowledged receipt of the documents they were accepted as evidence for these proceedings.

On December 18, 2016 the Tenant submitted 4 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were mailed to the Landlord sometime in December of 2016. The Landlord denied receipt of these documents and they were not accepted as evidence at the hearing on January 17, 2017.

On December 22, 2016 the Tenant submitted 4 pages of evidence and six photographs to the Residential Tenancy Branch. The Tenant stated that she believes this evidence was submitted to the Residential Tenancy Branch in regards to another matter and that she has not served this evidence to the Landlord as evidence for these proceedings. As this evidence was not served to the Landlord as evidence for these proceedings it was not accepted as evidence at the hearing on January 17, 2017.

On December 30, 2016 the Landlord submitted 39 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were sent by registered mail to the Tenant on January 02, 2017 and that the Canada Post website shows that it was received by the Tenant on January 04, 2017. The Tenant stated that she received these documents sometime in early January, although she cannot recall the date of receipt. On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that these documents were received by the Tenant on January 04, 2017 and they have been accepted as evidence for these proceedings. The hearing on January 17, 2017 was adjourned for reasons outlined in my interim decision of January 18, 2017. The hearing was reconvened on February 21, 2017 and was concluded on that date.

On February 09, 2017 the Landlord submitted 31 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were sent by registered mail to the Tenant on February 07, 2017 or February 08, 2017. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 14, 2017 the Tenant submitted 16 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were personally delivered to the Landlord on February 15, 2017. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for a premature end of the tenancy and/or loss of quiet enjoyment of the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on June 09, 2016;
- when the tenancy began they both understood the tenancy would end on July 01, 2016;
- the Tenant paid \$364.00 in rent for the tenancy that was to last only 21 days;
- the Tenant had a private bedroom in this residential complex;
- the Tenant shared a living area, a bathroom, and a kitchen with two other occupants of the residential complex;
- the Landlord lives in a suite in the lower level of this residential complex;
- the Tenant came to the rental unit with the police on June 25, 2016;
- on June 25, 2016 the Tenant asked for and was given a rent refund of \$160.00, in the presence of the police;
- on June 25, 2016 the Landlord retrieved the Tenant's property from her room and gave it to the Tenant, at the request of the Tenant and in the presence of the police; and;
- on June 25, 2016 the Tenant returned her keys to the rental unit.

The Tenant stated that:

- in the evening of June 21/22, 2016 one of the other occupants and his guests were being very loud so she knocked on his door and told the occupant his guests had to leave;
- the guests did not leave;
- she had a verbal altercation with the female guest;

- the female guest locked her out of the complex on three occasions during the incident, although she was able to regain entry on two occasions;
- at approximately 2:00 a.m. the Landlord entered the suite and told the guests they had to leave;
- while the Landlord was in the suite he told the female guest not to push the Tenant;
- she called the police but they did not arrive prior to her leaving the area;
- she eventually left the property and walked all night;
- she did not attempt to return to the rental unit that night;
- she returned to the property at 8:00 a.m. on June 22, 2016;
- when she returned to the property at 8:00 a.m. the Landlord was in the yard but he made no attempt to speak with her;
- when she returned to the property at 8:00 a.m. the female guest was still on the property and she physically prevented the Tenant from putting her key into the lock;
- she made no further attempts to enter the unit on June 22, 2016;
- on June 22, 2016 the Landlord never invited her into the complex to discuss the situation;
- on June 22, 2016 the Landlord told her to leave the property;
- the Landlord never left a telephone message asking her to contact him;
- she telephoned the police again on June 22, 2016 but they did not attend while she was in the area;
- she does not recall when she determined the locks to the unit had been changed; and
- she believes the Landlord should have contacted the police to ensure the guests left the suite at the time of the initial disturbance.

The Landlord stated that:

- in the evening of June 21/22, 2016 he was awakened by loud knocking in the upper suite;
- he went up to the suite and the Tenant was screaming and came rushing toward him;
- the Tenant was yelling at the female guest;
- he told the occupant that his guests had to leave;
- the guests and the Tenant left the suite at the same time;
- as the female guest and the Tenant were leaving the suite they both had their arms raised and he told the guest to leave the Tenant alone;
- the Tenant left the residential property and phoned the police from the street;
- he overheard the Tenant tell the police that she had a place to stay for the evening;
- the guests returned to the suite;
- he told the guests to leave the suite after the Tenant left the area;
- he returned to his home before the guests left the suite;
- he did not see the Tenant at 8:00 a.m. on June 22, 2016;

- on June 22, 2016 he tried to telephone the Tenant but she did not answer the telephone;
- on June 22, 2016 he left a telephone message asking the Tenant to contact him;
- the Tenant returned to the property unit at approximately 1:00 p.m. on June 22, 2016;
- he asked her to discuss the matter inside house and she refused;
- he told her that he was going to call an ambulance as he was concerned for the Tenant's welfare, at which point she left the area;
- he never told her to get off the property;
- he changed the locks to the rental unit shortly after the Tenant left the property on June 22, 2016 as he was concerned about the situation escalating;
- he left a second message for the Tenant advising her that he had changed the lock and asking her to contact him;
- within an hour of leaving the message the Tenant returned to the unit and confirmed the lock had been changed;
- later that day the police attended and told the Landlord that he must change the locks back;
- when he was speaking with the police he observed the Tenant in the area and he assumes that she overheard the conversation;
- he reinstalled the original lock shortly after the police officer left on June 22, 2016;
- he saw the Tenant outside the residential complex on June 23, 2016 and overheard her telling people she had been locked out; and
- he tried to speak with her again but she refused.

In her written submission the Tenant declared that:

- she attempted to enter the residential complex on June 22, 2016 at 4:00 p.m., at which time she realized the lock had been changed;
- she entered the common area of the residential complex on June 23, 2016 and saw the female guest was present; and
- she told the Landlord she would return the next day for her property.

The Landlord submitted a copy of a witness statement from the third occupant of the shared living accommodations. In the statement the occupant declared that the Tenant was causing a disturbance in the residential complex at approximately 10:00 p.m. on June 21, 2016, by loudly yelling that it was time for the third occupant's guest to leave and by kicking at the door of her own room. The Tenant stated that she could not have caused this disturbance because she was not home at that time/date.

The Landlord submitted a copy of a text message from the third occupant of the shared living accommodations, dated June 21st at 10:49 p.m. In the text message the author declares, in part, that the "old lady gone mad".

The Tenant is seeking to recover the costs of staying in a hotel from June 26, 2016 to July 01, 2016.

The Tenant is seeking compensation, in the amount of \$400.00, for a breach of her right to the quiet enjoyment of the rental unit.

Analysis:

Section 28 of the *Residential Tenancy Act (Act)* stipulates that a tenant is entitled to quiet enjoyment, including, but not limited to the rights to reasonable privacy, freedom from unreasonable disturbance; exclusive possession, subject to the landlord's right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Guideline #6 stipulates, in part, that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I find that the Landlord took reasonable steps to intervene in the dispute between the Tenant and an occupant's guests on the evening of June 21/22, 2016. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord came to the suite during the dispute between the Tenant and the female guest; he protected the Tenant from a possible assault by telling the female guest to leave the Tenant alone; and he told the guests to leave the rental unit. Although I think that the Landlord would have been well advised to remain in the suite to ensure the guests left the unit, I find that his decision to leave the guests with instructions to leave the property after the Tenant left the area was not unreasonable, given that the immediate dispute had been defused and he understood the Tenant was staying elsewhere.

In determining that the Landlord acted reasonably in the early morning hours evening of June 21/22, 2016 I am guided by the fact that the Landlord is not a police officer; he does not have legal authority to physically remove a guest from a rental unit; and he does not have a legal or moral obligation to protect a tenant from being physically assaulted by a third party. Had the Tenant waited until the police arrived after she telephoned them, it is highly likely the police would have ensured that the guests left the residence without further incident.

I find that the Landlord did have an obligation to attempt to resolve the conflict between the Tenant and the other occupant/guests that occurred on the evening of June 21/22, 2016. I find that the Tenant has submitted insufficient evidence to establish that the Landlord did not make reasonable efforts to resolve the conflict. In reaching this conclusion I was influenced, in part, by the absence of evidence that refutes the Landlord's testimony that he left two telephone messages for the Tenant in which he

asked her to contact him or that corroborates the Tenant's testimony that she did not receive any telephone messages from the Landlord.

In determining that the Tenant submitted insufficient evidence to establish that the Landlord did not make reasonable efforts to resolve the conflict between the Tenant and the other occupant I was further influenced by the absence of evidence that refutes the Landlord's testimony that he invited the Tenant into the residential complex to discuss the issue or that corroborates the Tenant's testimony that the Landlord did not attempt to speak with her after the incident.

In determining that the Tenant submitted insufficient evidence to establish that the Landlord did not make reasonable efforts to resolve the conflict between the Tenant and the other occupant I was further influenced by the absence of evidence that refutes the Landlord's testimony that he did not tell the Tenant to leave the property or that corroborates the Tenant's testimony that the Landlord told her to get off the property.

I find that the Tenant also had an obligation to contact the Landlord in an attempt to resolve the conflict of June 21/22, 2016. I find that the Tenant has submitted insufficient evidence to establish that she made reasonable efforts to contact the Landlord after she left the premises on June 22, 2016. Although she refers to an attempt to contact the Landlord in her written submission, she did disclose that information during the hearing.

I find that even if the Tenant had attempted to contact the Landlord on June 22, 2016 and was unsuccessful, she had the opportunity to wait until the police arrived to assist her with making contact with the Landlord and/or safely accessing her rental unit. I find that the Tenant's decision to leave the area prior to the police attending significantly contributed to the Landlord's inability to intervene in any meaningful way.

As the Tenant has submitted insufficient evidence to establish that the Landlord did not make reasonable efforts to protect her right to quiet enjoyment, I find that she is not entitled to compensation for a breach of her right to quiet enjoyment of the rental unit in regards to the dispute between her and other occupants/guests of the rental unit.

I note that in adjudicating this matter I have not concluded that the Landlord's testimony is more credible than the Tenant's testimony. When one party provides one version of events and the other party provides a second version of events, the onus is on the person making the claim to prove their version of events is correct. In these circumstances the burden of proof rests with the Tenant and I find that she has simply submitted insufficient evidence to establish that her version of events is correct in situations where the Landlord has given a different version of events.

In adjudicating this matter I was influenced, to some degree, by the witness statement from the third occupant of the residential complex who declared that the Tenant was causing a disturbance in the complex at approximately 10:00 p.m. on June 21, 2016, by yelling loudly that it was time for her guest to leave and by kicking at the door of her own room. Although the Tenant denies being home at this time I find that the witness

statement is credible because it is corroborated by a text message that the witness sent at 10:49 p.m. on June 21, 2016, in which she declared that the “old lady gone mad”.

On the basis of this witness statement I find it reasonable to conclude that the Tenant may have contributed to the disturbance that occurred later in the evening by acting in an unreasonable manner. On the basis of the Tenant’s own testimony I am satisfied that even if her actions did not initiate the later disturbance they certainly contributed to it rather than confronting the occupant’s guest and repeatedly leaving the complex and returning to the conflict, I find that the situation would likely have been less serious if the Tenant had simply returned to her room, contacted the police, and waited for assistance rather than confronting the guests.

I find that the Tenant’s role in the disturbance on the evening of June 21/22, 2016 made it significantly more difficult for the Landlord to resolve the conflict between the occupants.

Section 31(1) of the *Act* stipulates that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. I find that the Landlord breached section 31(1) of the *Act* when he changed the lock to the residential complex without first providing the Tenant with a new key to the lock. Even if the Landlord changed the lock to prevent further problems in the residential complex, I find that it was a misguided attempt to intervene and he did not have the legal right to do so.

As the Landlord breached the *Act* by changing the lock that provided the Tenant with access to the residential property, I find that the Tenant is entitled to compensation for this breach. Although the Tenant was prevented from accessing the rental unit for a period of less than one day, I find that the breach significantly impacted her right to the quiet enjoyment of the rental unit and I grant her compensation of \$100.00.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As this tenancy ended prior to July 01, 2016, which is when both parties understood was the end of the fixed term of the tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant vacated the rental unit, with the knowledge and consent of the Landlord, on June 25, 2016.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Tenant acknowledged in her written submission that she was in the rental unit on June 23, 2016, which is after the original lock had been reinstalled, I cannot conclude that this tenancy ended because the Landlord had changed the lock.

As this tenancy ended pursuant to section 44(1)(d) of the *Act* with the apparent consent of both parties, I find that the Tenant is not entitled to compensation for any living expenses incurred after she vacated the rental unit. Had the Tenant not wished to vacate the rental unit on June 25, 2016 she had the option of seeking a resolution to her concerns with the rental unit, with the assistance of the police if necessary. I therefore dismiss the Tenant's claim for compensation for hotel costs.

Conclusion:

The Tenant has established a monetary claim of \$100.00 for the breach of her right to the quiet enjoyment of the rental unit and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: February 22, 2017

Residential Tenancy Branch