



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on August 5, 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 granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves, as did the Landlord. All parties giving evidence provided a solemn affirmation.

The Tenants testified the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence on the Landlord, was served on the Landlord by registered mail on August 5, 2016. The Landlord acknowledged receipt of the Tenant's documentary evidence. In addition, the Landlord testified the Landlord's documentary evidence package was served on the Tenants by XpressPost on January 11, 2017. The Tenants acknowledged receipt.

Both parties were represented at the hearing and were prepared to proceed. No 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 granting recovery of the filing fee?

Background and Evidence

According to the Landlord, the Tenants rented an 1164-square-foot, 2-bedroom, 2-bathroom condominium. At all material times, the tenancy proceeded on a month to month basis. For the months of July, August and December 2014, and January 2015, rent was \$2,200.00 per month. Due to the disruption caused by construction, the Landlord reduced rent for the months of September, October and November 2014 to \$2,000.00 per month. The tenancy ended on January 30, 2015, by agreement.

The Tenants seek compensation for loss of quiet enjoyment and other alleged losses arising from construction to the exterior of the building. The Tenants provided oral testimony and documentary evidence in support of the Application. First, the Tenants claimed \$14,800.00 for a loss of quiet enjoyment for seven months from July 2014 to January 2015. This amount reflects a full refund of rent paid during this period. The Tenants testified they were unaware of the construction to be undertaken, and submitted that they received misleading information about what was happening at various stages of construction. In any event, the Tenants testified that the construction continued from July 2014 to January 2015. The Tenants claimed to have experienced persistent construction noise including drilling, hammering and music being played by workers. According to the Tenants, there were dust and smells associated with the construction and painting. The Tenant E.P. noted she had a small child at home and was pregnant with the couples' second child during this period. The Tenants stated the very loud construction noise could be heard throughout the day.

The Landlord did not dispute that construction was going on during the period from July 2014 to January 2015. However, she provided oral testimony and documentary evidence concerning the scope of the construction. The Landlord stated the construction involved full remediation of some, but not all, exterior walls. Some of the work was investigative only, to ensure the integrity of the building envelope. The work also involved the replacement of windows in rental units, including the Tenants'. Work took place during the day from Monday to Friday. The anticipated work was included in the strata council meeting minutes, included with the Landlord's documentary evidence, as early as August 2013.

Second, the Tenants claimed \$92.92 for BC Hydro bills from October 2014 to January 2015. This amount reflects 40% of what was actually paid by the Tenants. This calculation is based on the Tenants' estimate of the square footage impacted by the loss of use of several electrical outlets in the rental unit. The Tenants confirmed that although an electrical outlet in the bathroom could not be used, the overhead lighting worked.

In reply, the Landlord acknowledged some outlets were not useable as claimed by the Tenants. She referred me to a diagram showing the location of electrical outlets in the living and dining areas. The diagram indicates that two out of seven electrical outlets in the living and dining areas were not available for use. However, the Landlord testified that there were sufficient nearby outlets available to provide the Tenants with electricity.

Third, the Tenants claimed \$201.40 for internet service from October 2014 to January 2015. This amount reflects 50% of what was actually paid by the Tenants. When asked to clarify this aspect of the claim, the Tenant E.P. confirmed she was unable to use Wi-Fi as she had previously enjoyed and had to use a cable to access the Internet.

The Landlord made no submission in reply.

Fourth, the Tenants claimed \$3,725.00 for cleaning the Tenants performed in the rental unit. This amount is based on cleaning for 149 days at \$25.00 per hour. When asked to clarify this aspect of the claim, the Tenant E.P. testified it was based on two hours per day, Monday to Friday. The cleaning was related to dust in the rental unit and on the windows, and involved cleaning glue that dripped into the rental unit when the windows were installed.

In reply, the Landlord testified she responded when she was advised of the glue in the Tenants' rental unit and noted there was a very small amount of glue visible.

Fifth, the Tenants claimed \$144.00 for move out cleaning services. A receipt was provided in support. Then Tenant E.P. stated the cleaners did not do a full clean, but did clean the stove and fridge.

In reply, the Landlord testified the cleaners did not do a very good job, and that she had to clean behind the appliances after the Tenants moved out. The Tenant E.P. acknowledged the cleaners did not do a very good job.

Sixth, the Tenants claimed \$498.75 for moving services required at the end of the tenancy. The Tenants testified that they did not want to move but circumstances required them to.

In reply, the Landlord indicated that she had been very flexible with the Tenants throughout the tenancy, changing the tenancy agreement to a month-to-month tenancy on request in July 2014 and reducing rent for three months during construction.

Seventh, the Tenants claimed \$1,525.00 for reimbursement of rent paid at a second residence for the month of January 2015. The Tenants testified they found it difficult to find suitable accommodation, and that the Landlord required them to provide one month's notice to end the tenancy. However, the Tenants did not move into the new accommodation until late-January 2015. According to the Tenant E.P., the Tenants needed time to pack and repair.

In reply, the Landlord disagreed with the Tenants' characterization that she insisted on one month's notice. Rather, the Landlord described instances when she was very reasonable with the Tenants. For example, after the first year of the tenancy, the Landlord reduced rent by \$100.00 per month at the Tenants' request, changed the tenancy agreement from a fixed-term agreement to a month-to-month agreement as of July 2014, and reduced rent by \$200.00 per month for the months of September, October and November 2014, the anticipated duration of construction.

Finally, the Tenants seek to recover the \$100.00 filing fee paid to make the Application.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for loss of quite enjoyment, section 28 of the *Act* 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 also 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.]

To summarize, the Tenant's right to quiet enjoyment must be balanced with the Landlord's obligation to repair and maintain the residence. In this case, the Tenants testified they experienced a loss of quiet enjoyment and other losses as a result of remedial work that was completed from July 2014 to January 2015, at which time they vacated the rental unit. The Landlord testified she had no specific control over the remediation work, but agreed the construction caused some disruption to the Tenants, as evidenced by her rent reduction for several months in late-2014.

While I accept the Tenants experienced some inconvenience and disruption during the construction, I do not agree they are entitled to a full refund of rent from July 2014 to January 2015, as claimed. However, I do find the Tenants requested and accepted a rent reduction of \$200.00 per month from September to November 2014, which I find to be reasonable. Accordingly, I find the Tenants are entitled to an award of \$600.00 for loss of quiet enjoyment for the months of July, August and December 2015. This amount is based on a rent reduction of \$200.00 per month during this period, which aligns with what was previously agreed to by the parties. I have declined to grant

compensation for the month of January 2016 as the Tenants testified they had secured alternate accommodation and did not have to stay in the rental unit other than to pack.

With respect to the Tenants' claim to recover \$92.92 for BC Hydro bills from October 2014 to January 2015, I decline to grant the Tenants this amount. The amount sought by the Tenants is based on the estimated square footage impacted by the loss of use of two electrical outlets. The Landlord acknowledged that electrical outlets were impacted by the construction, and provided a diagram depicting their location. However, I find the loss of use of electrical outlets is not directly related to the BC Hydro invoice. In any event, I find it to be more likely than not that the loss of use of the two outlets was insignificant and could easily have been mitigated by the Tenants. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$201.40 for the inability to use their Wi-Fi as they had previously enjoyed, I find there is insufficient evidence before me to conclude the Tenants lost internet access. Indeed, the Tenant E.P. confirmed the Tenants still had internet access, but that it was a cable connection rather than wireless. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants claim for \$3,725.00 for cleaning the Tenants performed in the rental unit, I find there is insufficient evidence before me that this amount of cleaning was necessary or completed. While I accept there may have been increased dust in the rental unit during construction, the amount sought is unreasonable and is not supported by the Tenants' evidence. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$144.00 for move out cleaning services, I find it was the Tenants' responsibility to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I also note the Tenant E.P. testified that the cleaners did not do a very good job. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$498.75 for moving services, I find the tenancy ended by mutual agreement. To require the Landlord to bear this expense would be an unreasonable burden to place on the Landlord. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$1,525.00 for reimbursement of rent paid at another residence for the month of January 2015, I find that the tenancy ended by mutual agreement on January 30, 2015. If the Tenants thought they needed more (or less) time to secure accommodation, negotiations could have resulted in a different end of tenancy date. This aspect of the Tenants' claim is dismissed.

The Tenants have been partially successful. Accordingly, I grant the Tenants an award of \$100.00 in recovery of the filing fee. Pursuant to section 67 of the *Act*, I find the Tenants have demonstrated an entitlement to a monetary order in the amount of \$700.00, which consists of \$600.00 for loss of quiet enjoyment and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$700.00. 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: February 9, 2017

Residential Tenancy Branch