



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 by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The matter was originally scheduled to be heard on March 02, 2017. The hearing was adjourned due to the landlord's illness and was reconvened on March 31, 2017. An interim decision was sent to both parties along with a reconvened notice of hearing. The tenants attended the reconvened conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord did not appear until the hearing was almost concluded at 9.45. I allowed the landlord the opportunity to provide verbal testimony as the landlord stated that she had dialed into the call using the wrong participant code.

The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord did not provide any documentary evidence until the day before the hearing commenced. This evidence was not before me at the time of the hearing. I informed that landlord that she was given the opportunity at the first hearing to provide documentary evidence but that it must be received seven days before this reconvened hearing. Due to this under rule 3.15 and 3.11 of the Rules of Procedure I have not considered the landlord's documentary evidence. 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.

Preliminary Issues

The landlord had requested another adjournment of the hearing to allow her additional time to provide evidence as she stated she did not have time to look at the tenants' evidence package and provide her rebuttal. The tenants had testified that they had provided their evidence to the landlord originally in the landlord's mail box after they filed their application in August, 2016. The landlord testified that she had not received that package so the tenants were ordered to serve that evidence again to the landlord in the interim decision. The tenants did so on March 08, 2017. The reconvened hearing was scheduled for March 31, 2017. Therefore in accordance with the rules of procedure the tenants have provided their evidence within the allowable time frame for the landlord to respond. Accordingly, I have not allowed the hearing to be adjourned again and it proceeded as scheduled.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on August 15, 2013, for a fixed term tenancy that was due to end on August 30, 2014. The tenants vacated the rental unit on August 31, 2014. Rent for this unit was \$1,450.00 per month due on the 1st of each month in advance.

The tenants testified that their tenancy had been significantly devalued by the landlord's actions. The landlord sent numerous letters to the tenants sometimes two or three a day

about things the landlord felt the tenants were doing wrong or things the landlord wanted done differently. The tenants testified that they only started to save these letters from January, 2014 and have provided a quantity of these letters in documentary evidence.

The tenants testified that the letters complained about everything the tenants did. Before the tenants moved into the unit the landlord had informed them that a nice old lady lived in the unit downstairs when in fact it was the landlord herself who lived in that downstairs unit. The tenants feel that the landlord misrepresented the tenancy because of this.

When the tenants moved into the unit their front door opened into a foyer and then the tenants went up the stairs to their unit. There was a door located there for the landlord's emergency exit for her unit. The foyer was part of the tenants' unit yet the landlord wrote to them and told them it was a common area. The tenants testified that if this was the case it meant the landlord could enter their unit as there was not another door.

On one occasion AC was changing the batteries in the smoke detector as it was beeping. The landlord started shouting at AC asking her what she was doing. The landlord then just burst through her emergency exit door and entered the tenants' unit with CW. CW ran up the stairs and there was a screaming match when the tenant told him to leave. The tenants called the police and the police would not come out unless the tenants' safety was threatened. The tenants found this action by the landlord and CW to be intrusive and upsetting. The tenants' daughter was also very upset and became afraid of the landlord.

The tenants testified that there was another occasion when CW entered the tenants' unit without permission. DC had his work tools stored in the garage with the landlord's permission. DC found the garage door had been left wide open which put his tools at risk of being stolen. DC locked the garage door and not long after CW came up on the deck and barged into their unit demanding the garage door keys back. This created

another argument between CW friend and DC when DC yelled at CW to get out of their unit. The landlord seemed to think that the unit was still hers and that she and CW could enter it at any time.

Other letters to the tenants were about how they should arrange their furniture and the landlord made the tenants move their bed as it was over an air vent. The landlord then said she would come and check the vents throughout the year to make sure the tenants did not cover them. For a short while the tenants had two barbeques on their deck. The landlord got mad about this and told the tenants to get rid of one of them. The landlord then informed the tenants where their barbeque should be located and that they have to buy a special mat to go under the barbeque. Again CW friend entered the tenants' deck area without permission and spoke to them about the barbeque mat they had purchased because the landlord said it was not good enough. This happened three or four times. The tenants felt they could not enjoy their deck without the landlord or her friend coming up and complaining.

The tenants testified that if they were on the deck socializing the landlord and CW would be listening and would shout at the tenants. When the tenants moved in they were told they had full use of the back yard; however, the landlord put up an electric fence to keep raccoons out of her garden area but this was dangerous for the tenants' young child. The landlord also feed the raccoons which encouraged them to come into the backyard.

The tenants testified that the landlord complained about a car they had parked on their parking side of the driveway. This was a classic car that the tenants were hoping to sell it was not a junk car. The tenants agreed it was not insured because they were not using it and it was not parked on the road. Their tenancy agreement allowed them to have parking for two vehicles. The landlord continually harassed the tenants about this car in numerous letters. The landlord kept threatening to have the car towed away. The tenants testified that in the end to appease the landlord they sold the car.

On one occasion DC was fixing the brakes on their car on the driveway. The landlord wrote and said that they cannot do repairs to cars for the risk of explosion. The tenants testified that changing brakes on a car is something done by many households and there is no risk of explosion it is just another example of the landlord's scrutiny that created more complaints.

The tenants testified that at the end of the tenancy while they were moving out the CW came and took the locks off their doors. This happened the day before they moved out and it left their belongings still in the unit unsecure overnight. The tenants testified that in the last month of their tenancy they received many letters from the landlord about viewings for their unit. The tenants informed the landlord that they required 24 hours written notice for any viewings and if a notice was posted on their door then the landlord had to allow an additional three days before a viewing could take place. The landlord retaliated by sending another letter saying she would show the unit every day from Noon to 9.00 p.m. The tenants felt this was unreasonable and intrusive on the tenants' right to quiet enjoyment of their rental unit. The tenants never saw one person look at the unit and believe this letter was sent to annoy the tenants and inconvenience them. When the tenants disagreed with these viewing times the landlord sent a letter everyday about viewings even if a viewing was not scheduled.

The tenants testified that in one of the landlord's letters she was disregarding the *Act* and the rules and said that whatever cockeyed advice the tenants had obtained from the RTB the landlord still had a right to control what ever happened on her property. The tenants testified that this was in relation to the landlord demanding that the tenants have the carpets professionally cleaned by a carpet cleaner of her choice. The tenants testified that when they received the letter saying the landlord would come to view the unit every day; that this was the last straw and it caused the tenants AC to lose control after suffering from anxiety and AC tried to commit suicide. An ambulance, the police and the fire service were all called and the tenant AC was taken to hospital. The tenants testified that the constant intrusion in their lives for a year ruined their lives and they suffered from a loss of quiet enjoyment of their rental unit to which they were entitled

and AC lost a lot of time at work. The tenants seek compensation of \$2,500.00 as a fair amount to compensate them for this year of their tenancy being devalued by the landlord although from March to August 2014 where the most stressful times. It was due to this loss of quite enjoyment that the tenants decided to end their tenancy at the end of the fixed term and not continue it on a month to month basis.

The landlord joined the hearing at 9.45a.m. and was not present to hear the tenants' testimony. As the hearing was just about to end I did allow the landlord the opportunity to provide verbal testimony. The landlord testified that the tenants disturbed her right to quite enjoyment; they were loud both inside and outside their unit. They drank a lot and on August 11, 2014 when the ambulance, police and fire service were there this was because of a drinking incident when the tenants came home at 1.00 a.m. and started being physically violent towards each other. The police offered the landlord police protection due to this.

The landlord testified that on one occasion when the fire alarm was going off the landlord went upstairs and entered the common area. The landlord testified that CW did not go into the tenants' unit. DC pounded on CW's chest and threatened to kill him. On another occasion AC threatened the landlord that if the landlord showed the suite then she would do something to the landlord. The landlord testified that once she touched a tire on their vehicle and the tenant threatened to kill the landlord.

The landlord testified that there is nowhere in the *Act* that prevents the landlord from sending notes to the tenant. The landlord testified that she had to send them notes as they would not answer their phone or door. The landlord agreed she sent 15 letters concerning the tenants' unlicensed car on the driveway. The tenants were hoarders and often paid their rent late. The landlord denies that she was violent or abusive towards the tenants and feels she was very lenient with them.

The landlord testified that she and CW have entered the tenants' unit twice without written notice. The first time was when the fire alarm was going off and the landlord

went through her emergency exit door as she did not know if there was a fire or not. The landlord agreed she had heard the fire alarm chirping and knew the battery needed to be changed but the system needed to be turned off before this could happen. The landlord called the tenants but they did not respond. Half an hour later the fire alarm was going off, the landlord got a battery ready and presumed something was wrong and when she went through her fire door and found AC was changing the battery. The tenants had blocked the door and boxes fell on the landlord as she entered. The foyer was a common area and the landlord testified that she would never use her door unless there was an emergency. The second time they entered the tenants' unit was when they were moving out. The landlord testified that she did not want the carpets in the unit to be cleaned by the tenants and they had fought about cleaning the carpets. The landlord heard a noise CW went upstairs at 1.00 p.m. when the tenants should have moved out to investigate the noise.

The landlord testified that AC was mentally unstable and had many attempts at suicide. Now the tenant is blaming the landlord for her mental state when she was already ill. The incident on August 11, 2014 was because the female tenant was injured and the police offered the landlord protection. The landlord claims she has a police file number and the officer's name but agreed these have not been provided in documentary evidence.

The landlord called her witness CW. CW testified that he entered the unit on August 30, 2014 to change the locks. The tenants were given a new key for the locks and their security was not jeopardized. The locks could not be changed the next day as it was a Sunday. CW testified that when the tenant took the garage keys the witness did not enter their unit he was only on their patio. DC did bang CW on the chest and argued with him. CW testified that he also entered the unit when he did an inspection.

The tenants asked CW that if DC banged him on the chest why CW did not filed a police report. CW responded that they were fearful of the tenants. The tenants asked CW if he and the landlord were so scared of the tenants why did the landlord not file an

application to have the tenants removed from the unit. CW responded that the landlord wanted them to move but they would not sign an end to the tenancy form.

The landlord testified that the police called her back after DC attacked AC and the police informed the landlord what had happened. The landlord testified that she does not know what DC did to AC, just that AC was outside screaming.

The tenants asked the landlord how does she know what went on the night of August 11, 2014 or know that the tenants had been drinking all night, or know that AC had a breakdown or that DC had attacked her. The landlord responded that the police told her this and the police kept the tenants both separate in the yard and that AC had a broken hand.

The tenants disputed this and testified that the police did not come because the tenants had a fight. DC had called 911 after AC tried to commit suicide. The fire truck and ambulance came as well. The tenants testified that they do not drink; AC testified that she works a part time job and is a student. They don't have time to get drunk. The female tenant testified that she has suffered with some depression and anxiety in the past which was all under control until she moved into this unit. The police and the tenant's doctor advised AC not to have contact with the landlord in order to reduce her stress.

DC testified that he has never touched AC in angry or and did not touch CW.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenants have provided documentary evidence showing a number of letters sent to them by the landlord. While I concede that if other forms of communication between a

tenant and landlord is prevented then there is nothing under the *Act* that prevents a landlord from communicating her wishes to a tenant in a note or letter. What I have taken into consideration is whether or not the amount of letters and notes and the tone of these letters and notes constitute harassment. I find that some of the letters or notes are general in their content while some of them threaten other action against the tenants such as the towing of their vehicle. It is important to note here that it was determined at a previous hearing that the vehicle was legally parked on the driveway. I find many of the letters and notes appear to be the landlord wanting the tenants to conform to how she believes they should live when on her property. Some of the content of the letters I find contain unreasonable requests from the landlord including the notes and letters regarding viewings of the unit to prospective tenants.

The Residential Tenancy Policy Guidelines #6 provides guidance on a tenant's right to quiet enjoyment of their rental unit. Using this guidance I have considered whether or not the landlord's actions devalued this tenancy and caused the tenants to lose their right to quiet enjoyment of the rental unit and outside areas they were entitled to. The guideline states, 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 has directly caused the interference.

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the RTA and section 38 of the MHPTA a tenant may, with written notice, end a tenancy due to the breach of a material term. The standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the premises. Compensation for damage or loss may be more appropriate, depending on the circumstances.

Looking at the history of this tenancy and the abundance of letters and notes provided I find that many of the landlord's demands to be unreasonable for what a tenant may expect in a tenant landlord relationship. The tenants' right to exclusive possession of the rental unit was disrupted when the landlord claimed the foyer in their unit to be a common area, as the landlord could then enter this area from her unit at any time and gain access to the tenants' unit and their belongings. Furthermore, from the evidence before me I am satisfied that the landlord or the landlord's friend CW entered the tenants' unit or balcony on at least three occasions without proper written notice. I do not support the landlord's testimony that she only entered the tenants' unit or common area because she believed there was an emergency when the fire alarm went off. No reasonable person would run towards a fire but would rather take another exit away from the fire if they truly believed a fire was in progress. It is my finding in this matter that the landlord entered the unit because she was upset with the tenant for changing the battery in the smoke alarm. I am also satisfied that CW entered the tenants' unit and engaged in an argument with the tenants on at least two occasions. This person had no rights as a landlord and should not have entered or engaged with the tenants.

Further to this CW also agreed that he entered the tenants' unit on August 30, 2014 to change the locks on their door yet the landlord did not give written Notice of Entry for this and the tenancy did not end until August 31, 2014.

The landlord has testified that the tenants disturbed her right to quiet enjoyment of her home, under the Act the landlord does not have a reciprocal right to quiet enjoyment.

Had the landlord turned to the *Act* if she felt she had issues with any of the tenants' behaviour the landlord had recourse under s. 47 the *Act* to serve the tenants with a One Month Notice to End Tenancy for cause and to follow through with this by applying for Dispute Resolution seeking an Order of Possession. Instead the landlord continued to issue notices and letters to the tenants about issues she had which I find many of which to be unreasonable in a landlord/tenant relationship. I find the landlord provoked the situation further by the continuance of the letters on a daily basis which she should have known would have an adverse effect on the tenants' enjoyment of their rental unit.

I am not wholly satisfied that AC's suicide attempt was as a direct result of the loss of their quiet enjoyment as the tenant had previously suffered from depression and anxiety which may or may not have been escalated by the landlord's actions.

Having weighed up the evidence before me I am satisfied that the landlord's actions throughout the course of the tenancy, but practically in the last few months of the tenancy, went beyond what could be considered reasonable and was clearly an infraction under s. 28 of the *Act* which states:

28 *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.*

Accordingly I have taken into consideration the seriousness of the situation and the degree to which the tenants were deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation continued. I therefore turn my

mind to the matter of compensation. The tenants seek to recover the amount of \$2,500.00 from the landlord; I direct the parties to s. 7(2) of the *Act* which states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

With this in mind I find the tenants also had recourse the *Act* to have filed an application against the landlord before this situation escalated. I find the tenants did not do so when things reached a point when they felt their peace and quiet enjoyment was affected. Had the tenants done so, then the matter could have been dealt with sooner and possibly not continued to the point where there was a total breakdown in the relationship between the parties. I therefore find the tenants' award should be reflective of this and reflect how their tenancy was devalued by the landlord.

I direct the parties to s. 67 of the *Act* which states:

Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

It is therefore my decision that the tenants are entitled to compensation for a loss of quite enjoyment of their rental unit of **\$1,500.00**.

As the tenant's application has merit I find the tenants are also entitled to recover their filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,600.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: April 04, 2017

Residential Tenancy Branch