Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

a. A monetary order in the sum of $1020.83
b. An order that the landlord comply with the Act, regulation and/or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. The landlord complained she he not been properly served with the Application and evidence. The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guidelines provides that a party cannot avoid service by refusing to pick up their registered mail. The tenant produced evidence that he attempted to serve by mailing, by registered mail but the landlord refused to accept the delivery of the package. I determined the failure of the landlord to obtain the evidence was caused by a refusal to accept delivery of the package and this is not sufficient reason not to proceed with the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was served on the Landlord by mailing by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to a monetary order and if so how much?
b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or tenancy agreement?

Background and Evidence

At the end of May 2016 the parties entered into a fixed term tenancy agreement that provided that the tenancy would end on June 1, 2017. The rent is $1000 per month payable in advance on the first day of each month. The tenant paid a security deposit of $500 at the start of the tenancy.

The tenancy was acrimonious. The landlord served a one month tenancy on the Tenant dated August 23, 2016. The tenant filed an application disputing the Notice to End Tenancy and a number of other items of relief including a monetary order of $1880. The landlord filed an Application seeking an Order of Possession and a monetary order in the sum of $6544. A hearing was held on October 18, 2016. In a decision dated December 5, 2016 the arbitrator cancelled the Notice and dismissed both monetary claims. The arbitrator ordered that the landlord must comply with Section 11.5.4 of the tenancy agreement and check the mailbox twice weekly and promptly deliver any correspondence or packages to the tenant.

The tenant filed another application for dispute resolution that was heard on March 7, 2017 and a decision rendered on March 15, 2017. The landlord failed to attend this hearing. The decision records that the tenant sought a monetary order in the sum of $5000 including $400 for snow and ice removal, $3000 reduction of rent for 6 months and $1582 for loss of quiet enjoyment. The arbitrator granted the tenant a monetary order in the sum of $507.82 including $500 for loss of quiet enjoyment and $7.82 for key cutting. The balance of the claim was dismissed. The arbitrator also ordered that the tenancy end on May 1, 2017.

The tenant has not paid the rent for April 2017.

The tenant testified as follows:

- On March 7, 2017 the landlord advised the tenant he had no mail. A search of the Canada Post tracking service indicates that the registered mail had been returned on that date. That mail was subsequently given to the tenant on March 13, 2017.
- A second item of registered mail was not returned to the tenant.

- Around the middle of March the tenant was disturbed by the landlord when the landlord returned and kept the television on until 3:00 a.m. The tenant e-mailed the landlord asking the landlord turn down the volume. The police were called and talked to the landlord.
- The disturbances into the early hours of the morning lasted for about one week.
- The landlord denied the tenant access to the garbage bin.

The agent for the landlord testified as follows:

- She was participating in this hearing from an out of town location. Her mother had come to visit her as she a couple of weeks ago as she was recovering from and operation.
- The waste bin was locked up because of concern about bears in the community.
- On Marcy 27, 2017 the tenant missed the garbage disposal time.
- She denied that she has been intentionally trying to harass or disturb the tenant.
- The parties usually communicated with each other by telephone or texting. If the tenant sent an e-mail asking the TV be turned down it is unlikely the landlord would be checking the e-mail in the middle of the night.
- The landlord's son is staying in the rental unit while she stays with her daughter.
- The landlord gave evidence she fears for her safety because of the conduct of the Tenant.

Law

Policy Guideline #6 provides as follows:

"**B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

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, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

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.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). 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. "

Analysis

With regard to each of the tenant's claims I find as follows:

a. I dismissed the tenant's claim that the landlord be fined for failure to deliver the mail. An arbitrator does not have jurisdiction to make such an order. The applicant must go through a different process for a fine to be levied.
b. I dismissed the tenant's claim that I enforce the order of the previous arbitrator relating to the delivery of mail. An arbitrator does not have jurisdiction to enforce the order of another arbitrator.
c. I dismissed the Tenant's claim of $108.53 for the cost of printing and registered mail. This claim relates to the cost of preparing and conducting litigation. The only jurisdiction relating to cost that an arbitrator has is the cost of the filing fee (where an applicant has paid a filing fee to the Registry).
d. The tenant sought an order in the sum of $67.55 for the cost of re-directing his mail. He did not do this until April after he obtained an order ending the tenancy on May 1, 2017. The tenant intends to relocate to Alberta to attend school. I dismissed this claim as the tenant failed to prove the landlord was responsible for this additional fee.
e. I dismissed the tenant's application for a monetary order in the sum of $344.75 for the cost of alternate package location. He gave evidence that he asked others that packages be delivered to his brother's. His claim is based on travel time and mileage costs incurred for the months of December, January, February and March. I determined the tenant failed to prove that this action was

necessary or that the landlord would not provide him with his mail. Further, the concept of res judicata provides as follows:

> "The Supreme Court of British Columbia in Jonke v, Kessler, Vernon Registry, Docket No. 3416 dated January 16, 1991 held that the principle of res judicata applies to residential tenancy arbitration. The policy reasons in favor of the principle are set out in a decision of Hardinge L.J.S.C., in Bank of B.C. v. Singh 17 B.C.L.R. (2d) 256 as follows:
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> > "…While people must not be denied their day in court, litigation must come to an end. Thus litigants must bring their whole case to court and they are not entitled to relitigate the same issues over and over again. Nor are litigants entitled to argue issues that should have been before the court in a previous action…"

The hearing for the previous arbitration was held on March 7, 2017. While this claim was not specifically made in that proceeding it is a claim that should have been made.

f. The Application for Dispute Resolution seeks a rent reduction of $500 for March 2017 on the basis that the landlord has harassed the tenant. I do not accept the submission that the landlord is responsible for the failure to provide a garbage bin. I accept the evidence of the landlord that the locking of the bin was necessary because of the presence of bears. The tenant sought compensation for excessive noise for a 7 day period caused by the landlord playing the TV to the early hours of the morning and disturbing the tenant by walking heavily during the late evening. I determined the tenant is entitled to $75 for this claim. I am satisfied the TV was played without regard to the disturbance for a period of 7 days. I considered that it would unreasonable for the tenant to expect the landlord would get the message on the first evening when he e-mailed rather than telephoned or sent a text message. However, the landlord should have been aware the TV was too loud after the police had visited. I have also considered that the landlord has been out of the country for an extended period of time helping her daughter recover from her operation and the tenant has not complained about disturbances since the 7 day period..

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of $75.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 13, 2017

Residential Tenancy Branch