# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated February 7, 2017 (the "Application"). The Tenant 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;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on her own behalf and provided affirmed testimony. The Landlords did not attend the hearing.

The Tenant testified that the Application package, which included the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlords by registered mail on April 10, 2017. The documents were sent to the residential property where the rental unit was located, and where the Tenant testified the Landlords still reside. In support, the Tenant testified that she currently lives in the area and saw the Landlords' vehicle in the driveway as recently as last weekend. In addition, the Tenant submitted a Canada Post registered mail receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenant's Application package is deemed to have been received by the Landlords on April 15, 2017. The Landlords did not submit documentary evidence in response to the Application package, or attend the hearing.

The Tenant was 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.

Preliminary and Procedural Matters

The Tenant confirmed during the hearing that the use of the number "7" to describe the rental unit on the Application was a typographical error. She confirmed there were not multiple units in the residential property, but that she and a roommate occupied the only basement suite. Accordingly, pursuant to section 64(3)(c) of the *Act*, I amend the Application to indicate the dispute address is a basement suite.

Issue to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to a monetary order granting recovery of the filing fee?

Background and Evidence

The Tenant testified she had lived in the Landlords' basement suite since 2012. However, effective June 1, 2016, the Tenant and a roommate entered into a new tenancy agreement with the Landlords. According to the Tenant, rent in the amount of $1,700.00 per month was due. However, the Tenant's roommate gave written notice to end the tenancy, which had an unanticipated impacted the Tenant, who moved out on or about August 31, 2016.

The Tenant applied for compensation in the amount of $11,500.00 for loss of quiet enjoyment. She provided a number of examples of Landlord behaviours which she characterized as hostile and aggressive. First, she stated that access to mail was an issue during the tenancy. The Tenant testified she was able to collect her mail but had to use the Landlords' mailbox. However, the Landlords' dog made accessing the mailbox difficult, and she testified that the Landlords' dog bit her on two occasions in 2016. Although the Tenant testified she did not require medical attention, she stated she was bruised as a result. In addition, the Tenant testified there was one incident when one of the Landlords opened a jury summons letter addressed to her. Further,

the Tenant testified the Landlords accused her of accessing an area for their exclusive use to get her mail without permission. The Tenant indicated there was no other way to collect her mail.

Second, the Tenant testified she did not feel comfortable having guests at the suite. She estimated she held only seven dinner parties from October 2013 to August 2016 because of the Landlords' behaviour. In a recent example that took place on June 11, 2016, one of the Landlords attended the rental unit at about 10:30 p.m. to complain about noise caused during a dinner party. According to the Tenant, the noise was reduced, but the same Landlord returned 15 minutes later and yelled at the Tenant in front of her guests. The Tenant provided five letters from guests in support.

Third, the Tenant testified that the Landlord and contractors walked through an area that was for her exclusive use while renovations were ongoing. This occurred on 4-5 occasions. The Tenant also testified the Landlord occasionally showed up at the Tenant's rental unit and knocked on the door unannounced.

Fourth, the Tenant described a situation that occurred on June 6, 2014. Thinking she smelled a gas leak, she contacted the Landlord, who instructed her to call Fortis BC. The Tenant did so and a representative attended the rental unit to shut off the gas. In a subsequent text message, the Landlord indicated his surprise about the leak and stated he would have it looked at on his return. The Tenant submitted the rental unit contained substandard wiring that put the Tenant in danger, and that the Landlord questioned the assessment of the Fortis BC technician.

Fifth, the Tenant submitted the Landlord did not do repairs as needed during the tenancy. She referred to a text message from the Landlord in response to a request by the Tenant. It stated:

> *Honestly, I am not a handyman & your rental is not paramount to us- I will fix [the dishwasher] when I can.*
>
> [Reproduced as written.]

Sixth, the Tenant referred to hostility from the Landlords after the Tenant's roommate gave notice to end the tenancy. She noted that the Landlord retained a lawyer and provided a letter confirming the Landlords' position that the roommate's notice was effective to end the tenancy for the Tenant as well. The letter also described the Landlords' belief that the Tenant may have sublet the rental unit without consent, although the Tenant testified that this did not occur.

Seventh, in the context of a Small Claims action, incorrectly filed by the Tenant in the Provincial Court of BC, the Landlords plead that "[the Landlords'] car was coincidentally badly keyed the day [the Tenant] received her deposits but without proof, this has not been pursued." She testified she did not damage the Landlords' car. The Tenant stated she perceived the Landlords' response to her Small Claims action, and their decision to retain legal counsel, a "threat".

Eighth, the Tenant testified the Landlords engaged in intentional stomping on the floor above during the last few months of the tenancy, after the roommate gave written notice. In support, the Tenant submitted a type-written and unsigned letter from her former boyfriend, R.O., describing the noise as a "cacophony".

Finally, the Tenant highlighted the importance of the rental unit to her, both personally and professionally. She indicated it was a hardship to move, particularly in light of the low vacancy rate, and also because she needed to find alternate accommodation that would permit her two cats. The Tenant stated she was "forced" to move to a rental unit and pay twice the rent for half the space.

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 an arbitrator 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.

In this case, the Tenant claimed $11,900.00 for loss of quiet enjoyment during the tenancy. Section 28 of the *Act* states:

> *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
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> *(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 for a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:*
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> - *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.]

The Tenant provided a number of examples that she asserted entitle her to compensation from the Landlords. With respect to concerns about her ability to retrieve her mail, the Tenant confirmed during the hearing that she was able to obtain her mail. However, I find that the location of the mailbox, and the presence of a dog on the property, were inconveniences and did not prevent her from obtaining her mail. I also note the Tenant had lived at the property since 2012 with this arrangement. Further, the Tenant adduced no evidence that she had previously made an application with respect to this issue, or authority to suggest the Landlords were obligated to provide her with a dedicated mailbox. That the Landlord may have opened one piece of the Tenant's mail could have been an inadvertent error as easily as a suspicious act, as alleged by the Tenant.

The Tenant also described one incident on June 11, 2016, when the Landlord came to the Tenant's rental unit to complain about noise. The Tenant's evidence confirmed the Landlord D.C. returned 15 minutes later, at which time the exchange became heated. No other examples were provided. Accordingly, I find this incident does not constituted "a course of repeated or persistent threatening or intimidating behaviour", as articulated in Policy Guideline #6.

With respect to the Tenant's claim that the Landlords' contractors walked through an outdoor area that was designated for her exclusive use on several occasions, I find there is insufficient evidence before me, such as a copy of the tenancy agreement, to conclude the outdoor area was for the Tenant's exclusive use. In addition, section 32 of the *Act* creates an obligation on landlords to maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards. Even if I had been satisfied the Tenant's right to exclusive use of the outdoor space existed, it would be balanced with the Landlords' obligation to maintain the residential property.

The Tenant also provided testimony with respect to an alleged gas leak at the rental property. The Tenant confirmed the leak was addressed by Fortis BC, in consultation with the Landlords. However, she submitted that the Landlords' attitude towards the leak, the potential health impact on the Tenant, and the questioning of the Fortis BC technician's qualification entitles her to compensation. As noted above, Policy Guideline #6 indicates that a "[t]emporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment." In this case, the Tenant's concern was addressed by the Landlords. The Tenant's primary concern appeared to be related to the Landlords' attitude towards the event.

Next, the Tenant sought compensation for the Landlords' response to a request to repair the dishwasher in the rental unit. The Landlords' response is reproduced above. Again, section 32 of the *Act* requires landlords to "provide and maintain residential property in a state of decoration and repair that…complies with the health, safety and housing standards required by law, and…makes it suitable for occupation by a tenant." In this case, I find the Landlords' text message demonstrates a cavalier attitude towards their obligations under the *Act*. However, this incident does not constitute an instance of "repeated or persistent threatening or intimidating behaviour", as required by Policy Guideline #6.

Further, the Tenant alleged threatening and hostile behaviour on the part of the Landlords that occurred at the end of the tenancy. In this case, the Tenant's roommate provided the Landlords with a notice to end the tenancy, which impacted the Tenant. The Tenant incorrectly commenced litigation in the Provincial Court of British Columbia, and the Landlords retained legal counsel to respond to the Tenant's claim. Ironically, the Tenant characterized the Landlords' response to the civil action as threatening. I find the Landlords' response was reasonable in the context of litigation.

The Tenant also sought compensation as a result of what she described as intentional stomping on the floor above the Tenant's rental unit. She submitted this occurred in the months before the tenancy ended, after her roommate had given notice. The Tenant submitted a letter in support of the noise. However, the letter is type-written and is unsigned. Accordingly, I give it little weight. In addition, I find it would be unlikely the Landlords would intentionally disrupt the Tenant when the tenancy was already ending based on the roommate's notice.

After careful consideration of the above, I find the Tenant has not demonstrated an entitlement to the relief sought. The examples provided by the Tenant did not meet the threshold required for me to conclude the Tenant suffered a loss of quiet enjoyment. The examples provided by the Tenant were not in the nature of the examples provided as articulated in Policy Guideline #6. Rather, I find the examples she provided are more accurately characterized as causing "[t]emporary discomfort or inconvenience" that could have been remedied during the tenancy. Accordingly, I find the Tenant's Application is dismissed.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

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: July 19, 2017

Residential Tenancy Branch