



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for a Monetary Order for damage or loss under the tenancy agreement, pursuant to section 67 of the *Act* and for a return of the filing fee.

The landlord confirmed receipt of the tenant's application for dispute resolution and evidentiary package by way of a courier on February 21, 2017. While not a recognized form of service under the *Act*, I nevertheless find that the landlord was duly served with the tenant's application and evidentiary package on February 21, 2017.

Following introductory remarks, the tenant explained that previous arbitrations with the landlord had resulted in a Monetary Order in the tenant's favour. Because of these awards, the tenant stated that his current application for a Monetary Order should be amended to \$20,360.59 in reflection of these past awards. Specifically a previous arbitrator gave the tenant \$85.73 for an overpayment of utilities, \$250.00 for an issue with an office on the rental premises, and \$355.20 for a return of a security deposit. Pursuant to section 64(3)(c) the tenant's application is so amended.

Preliminary Issue – Landlord's Evidence

During the hearing, the tenant made numerous submissions concerning the right of the landlord to enter evidence for consideration at this hearing. The tenant claimed that the arbitrator who heard their previous arbitrations on January 5, 2017 and January 26, 2017 ordered that the landlord not enter any further evidence. After having carefully reviewed the decision related to this matter, I find that the arbitrator did in fact order that the landlord not enter any further evidence; however, his order was confined to only the hearings of January 5, 2017 and January 26, 2017. The arbitrator made no order preventing the landlord from entering any evidence to a future proceeding. As the

tenant's application heard on July 20, 2017 was a new and separate undertaking, all the evidence submitted to the Residential Tenancy Branch will be considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for loss of quiet enjoyment and expenses incurred as a result of the tenancy?

Can the tenant recover the filing fee?

Background and Evidence

Testimony was presented by both parties that this tenancy began on August 1, 2015 and ended in June 2016. Rent was \$975.00, with the tenant responsible for 1/3rd of the utilities. Following the conclusion of the January 5 & 27, 2017 arbitrations the landlord was ordered to return \$355.20 of the security deposit to the tenant.

The tenant explained that he was seeking a Monetary Order of \$20,360.59 to represent expenses that he incurred during the tenancy, as well as the loss of quiet enjoyment that he experienced during his time in the rental unit.

Specifically, the tenant sought the following:

Item	Amount
Loss of Quiet Enjoyment @ 50% of the month's rent (\$487.50 x 6 months) representing the time period of December 27, 2015 to June 30, 2016	\$2,925.00
Reimbursement for cleaners	522.50
Punitive damages @ \$200.00/episode with 26.5 episodes occurring (26.5 x 200.00)	5,300.00
Punitive damages for unauthorized suite entrance @ \$1,000.00/episode (2 x 1,000)	2,000.00
Loss of Track Day/Related Equipment and Expenses	2,225.00
Loss of Business	7,388.09
Total =	\$20,360.59

The tenant provided very detailed oral, written and digital submissions detailing why he felt he was entitled to a monetary award of such magnitude. The tenant explained that

his relationship with the landlord had become very strained and as a result he suffered both emotionally and financially. In addition to the tenant's submissions, the landlord provided comprehensive written and oral submissions at the hearing.

Below, I will detail all aspects of the tenant's claim, along with the landlord's response.

Loss of Quiet Enjoyment

Much testimony was provided by the tenant concerning the manner in which he felt the landlord had violated his right to quiet enjoyment of the property. The tenant sought a return of 50% of his rent for the time period of December 25, 2015 to June 30, 2016. The tenant explained that the landlord entered his suite on two occasions (December 27, 2015 & May 28, 2016), purposely produced a significant amount of noise above the tenant's suite, harassed the tenant through a number of unsolicited phone calls, and engaged in a verbal confrontation with the tenant. Furthermore, the tenant explained that the landlord left several notes around the premises instructing the tenant on ways in which the tenant should care for the rental unit.

The landlord denies violating the tenant's right to quiet enjoyment. He denied entering the suite without permission, stating that he always provided the tenant with 24 hours written notice. He continued by explaining that the signs were merely left to inform the tenant of concerns that he had regarding the suite as he had been advised he could do so by a friend who was a landlord in Vancouver. The landlord acknowledged that at times interactions between the parties got heated; however, he stated that ultimately he had no issues personally with the tenant. The landlord provided written submissions as part of his evidentiary hearing alleging that the video recordings submitted to the hearing by the tenant are false and have been manipulated to cast him in a poor light. The landlord said that the unsolicited phone calls cited by the tenant were accidental and the result of "pocket dialing." The landlord explained that he did enter the tenant's premises on December 27, 2015 because the tenant had asked him to remove some garbage which he had forgotten to take out prior to his leaving for Christmas vacation.

Professional Cleaners

The tenant is seeking \$522.50 from the landlord for a professional cleaning service that he allegedly hired at the behest of the landlord. The tenant said that the landlord insisted that the windows and window sills were at risk of black mould growth. The tenant testified that he was running his own business and did not have time to attend to

the concerns of the landlord. The tenant said that in an effort to appease the landlord, he hired cleaners to ensure that the cleaning was done to an adequate standard.

The landlord denied ever directing the tenant to hire a professional cleaner. He acknowledged politely reminding the tenant to ensure that the rental unit was clean and tidy, but he strongly refuted the tenant's submissions that he was pressured to ensure that the window and window sills were clean.

Punitive Damages

As part of the tenant's evidentiary package, a USB stick containing video footage of a confrontation with the landlord and a bizarre encounter with an unidentified individual were submitted at the hearing. The tenant wants to collect \$5,300.00 in punitive damages for the excessive bullying he said he experienced at the hands of the landlord. The tenant described arriving at this figure after having considered legal decisions that he had read. \$5,300.00 represents 26.5 episodes at \$200.00 per episode. The above mentioned video footage presents two episodes involving the tenant. The first incident is a video of the landlord screaming profanities at the tenant for approximately 1 minute. The second incident shows an unknown person who appears to be under the influence of alcohol, engaging the tenant in a very strange conversation regarding drug dealers in the neighbourhood. This occurred in the driveway of the property as the tenant was in his car with his son.

In both his oral and written submissions the landlord strongly denied ever bullying or being disrespectful to the tenant. As mentioned above, the landlord alleged that the video recordings submitted into evidence had been digitally manipulated and he explained that he confronted the tenant on the first video after the tenant knocked on his door at 9:00 P.M.

Illegal Entry of Suite

The tenant is looking to recover \$2,000.00 from the landlord for perceived illegal suite entries by the landlord. These events are purported to have taken place on December 27, 2015 and May 28, 2016. The tenant presented video footage demonstrating the landlord entering the suite with an unknown person. This video shows the landlord taking photos of the rental unit. In addition, during these alleged illegal entries, the tenant said that the landlord left numerous notes in the suite instructing the tenant on how he should conduct himself while in occupation of the rental unit.

During the hearing, the landlord explained that he had been asked by the tenant on December 27, 2015 to enter the rental suite so that garbage that the tenant had forgotten to dispose of could be removed. The landlord said that the tenant had left the property for Christmas holidays and feared that it would rot.

The landlord continued by stating that he had given the tenant a 24 hour written notice on May 27, 2016 to enter the suite to perform a routine inspection. As part of the landlord's evidentiary package, he provided a hand written letter dated May 27, 2016 which he said he had hand delivered to the tenant at 6:00 A.M.

Loss of Track Day

During the course of the hearing the tenant described in great detail being an avid motorcycle enthusiast and noted that he had spent a great amount of time and money preparing his motorcycle for an event at a local raceway. The tenant cited a figure of \$8,300.00 in expenses that he had incurred preparing for this event on May 28, 2016. The tenant explained that on the day of the event, the landlord had illegally entered his suite. A notification on the tenant's phone informed him that someone was present in his rental unit. As a result of this intrusion the tenant said that he was forced to leave the track day and attend to the situation in his unit. The tenant testified that the RCMP were contacted that day and many hours of his time were lost. The tenant said he wanted to recover 25% of his associated track day expenses and was seeking \$2,225.00 for his losses.

The landlord has categorically denied all aspects the issues related to the track day and the loss of business. The landlord repeated his testimony that he had provided written notice of his intention to enter the suite on the day in question, and he stated that it would have been unusual for the tenant to have attended a local raceway because no events were scheduled that day. As part of his evidentiary package, the landlord presented a track schedule for the 2016 motorway season

Loss of Business

The tenant explained at the hearing that he and his son ran their own businesses which he said were disproportionately affected by the landlord's actions. The tenant said that because of the time he spent attending to the landlord's demands, he lost \$26,386.03 in business from the previous year. Furthermore, the tenant explained that his son was unable to produce online content for his business because of the landlord's interference.

The tenant sought a return of 28% in the loss of revenue from the previous year, thus a monetary award of \$7,388.09.

The landlord questioned the tenant's accounting and how the figures submitted to the hearing were arrived at. The landlord asked that all aspects of the tenant's application for a Monetary Order be dismissed.

Analysis

Based on the significant amount of testimony, audio and written submissions supplied to the hearing, it is apparent that the relationship between these two parties significantly deteriorated.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

A large majority of the tenant's application is focused on his loss of quiet enjoyment related to the tenancy. I will therefore begin by analyzing this part of his claim.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides 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, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.

This *Policy Guideline* continues by noting that, “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 *Act*. 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.”

I find based on the evidence before me at the hearing and based on the testimony of the parties that a breach of quiet enjoyment has occurred. I find the videos submitted to the hearing by the tenant demonstrating the landlord acting in a very aggressive and hostile manner are reliable evidence of substantial interference with the ordinary and lawful enjoyment of the premises and of a breach of quiet enjoyment caused directly by the landlord. In addition to the video evidence, I find the landlord's posting of notes in the apartment to be an unnecessary intrusion in his tenant's personal space. If the landlord had serious concerns around the state of the property, he could have found a less invasive way to bring these worries to the tenant's attention.

In addition, while the landlord may not have directly ordered that the tenant have the rental unit professionally cleaned, I find that enough evidence exists demonstrating that the landlord involved himself intrusively in the tenant's life so that the tenant felt unnecessary pressure to ensure that the rental unit was kept tidy. Specifically, I found the oral testimony of both parties to be of considerable influence. During the hearing, the landlord acknowledged “reminding” the tenant of his desire for the tenant to maintain a clean rental unit, while the tenant noted the tension he felt as a result of the landlord's constant reminders.

The tenant sought a return of 50% of his rent for the time period of December 2015 to June 2016, in addition to \$5,300.00 representing 26.5 episodes of the landlord acting inappropriately and poorly, at \$200.00 per episode. The tenant explained that he had reached these figures on past judgements that he had reviewed. These judgements were not provided to the hearing. I find a return of 50% of the tenant's rent to be excessive and as a result of his loss of quiet enjoyment, I will award the tenant a monetary award equivalent to one month's rent.

With respect to the tenant's specific claim for cleaning expenses, I find this was not directed by the landlord and an expense the tenant incurred of his own volition, for which there is no basis to award compensation.

I find insufficient evidence exists to establish that the landlord illegally entered the rental unit at any time. Letters dated April 13, 2016 and also May 27, 2016 submitted at the hearing by the tenant, demonstrate that the landlord took steps to ensure that the tenant was informed of any potential suite entries. I found the testimony of the landlord to be credible concerning the alleged illegal entry on December 27, 2015 and find that his explanation of events to be reasonable.

In addition to the tenant's application related to loss of quiet enjoyment, a large portion of the tenant's claim for a monetary award centres on his loss of funds related to a track day and loss of business revenue. I find that there is a significant lack of evidence tying any loss of business revenue and a loss of track day expense to the tenancy. A large number of factors could have contributed to the tenant's loss of business revenue over the period of the tenancy. Other than the tenant's oral testimony, only an undetailed, 'Profit and Loss Prev Year Comparison' sheet was provided at the hearing by the tenant as evidence of his loss. Furthermore, no receipts or documentation related to a loss of business revenue or track day expenses were submitted to the hearing. Finally, a copy of the letter that the landlord provided to the tenant regarding his entry to the rental unit on May 27, 2016 was presented at the hearing showing he did so at the tenant's request to remove garbage. I do not find that the tenant has sufficiently demonstrated that this loss is related to the tenancy and dismiss the claim for business and track day losses.

The tenant has also claimed punitive damages. I have no power to award punitive damages under the *Act*, so I must dismiss this aspect of the tenant's claim.

As the tenant was partially successful, he may recover the filing fee related to his application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,075.00 against the landlord. This amount is the equivalent of one month's rent (\$975.00) plus the recovery of the tenant's \$100.00 filing fee. The tenant is provided with a Monetary Order in the

above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 11, 2017

Residential Tenancy Branch