Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL CNR FF MNDC MNSD

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The application from the tenant requested:

- a cancellation of a 2 Month Notice to End Tenancy pursuant to section 49 of the *Act*
- a cancellation of a 1 Month Notice to End Tenancy pursuant to section 47 of the *Act*;
- a cancellation of a 10 Day Notice to End Tenancy pursuant to section 46 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for damages suffered;
- a return of the security deposit pursuant to section 38 of the *Act;* and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was personally handed a copy of the Application for Dispute Resolution hearing package ("dispute resolution hearing package") on approximately August 9, 2017. The landlord confirmed receipt of the package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution hearing.

On approximately September 7, 2017 the tenant amended her application for dispute resolution to reflect a new monetary claim of $35,000.00.

Preliminary Issue – Adjournment Request

Following opening remarks, the respondent landlord, requested an adjournment of the proceedings to October 2017. The landlord explained she was very nervous about the proceedings and wished to be represented at the hearing by her lawyer. She stated that she was prepared for the hearing and understood the materials and the case against her, but she explained that she did not feel comfortable presenting the materials. The applicant objected to this adjournment request, arguing that she had served the landlord in accordance with the *Act*, that she had received materials in response to her claim from the landlord, and that she herself could not afford a lawyer and was prepared to argue the case without counsel.

Rule of Procedure 7.9 lists the criteria for granting an adjournment. It reads as followings;

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
• the oral or written submissions of the parties;
• the likelihood of the adjournment resulting in a resolution;
• the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
• whether the adjournment is required to provide a fair opportunity for a party to be heard; and
• the possible prejudice to each party.

At the hearing, I declined to adjourn the matter. I explained to the landlord that she had submitted over 140 pages of evidence in response to the tenant's claim, that both parties would be unrepresented at the proceedings and would therefore be equally provided with a fair opportunity to be heard, and that ultimately the burden of proof remained with the applicant tenant to prove her case.

Issue(s) to be Decided

Can the tenant cancel the landlord's notices to end tenancy?

Is the tenant entitled to a Monetary Order?

Is the tenant entitled to a return of the security deposit?

Can the tenant recover the filing fee from the landlord?

Background and Evidence

Testimony provided at the hearing by the tenant, along with a copy of the tenancy agreement shows that this tenancy began on May 1, 2017 and was set to expire in May 2018. It was for a fixed-term of 1 year, with $1,200.00 rent being due on the 29th of each month. A security deposit of $600.00 collected at the outset of the tenancy continues to be held by the landlord.

The tenant explained that she was served with 3 different Notices to End Tenancy. On July 29, 2017 she was handed 2 Month Notice to End Tenancy. The landlord explained during the hearing that her son had fallen ill, and it was determined that the best course of action for his health would be for him to return home. On August 29, 2017 the landlord withdrew this notice and issued a 1 Month Notice to End Tenancy for Cause. The reason cited by this notice was that the tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord. On September 2, 2017 the tenant was served with a 10 Day Notice to End Tenancy for unpaid rent for the month of September 2017.

During the course of the hearing the tenant said that she no longer wished to dispute these notices and would be accepting them. She said she was moving out of the unit on September 30, 2017 because of the 2 Month Notice issued to her on July 29, 2017.

The tenant sought a Monetary Award of $35,000.00 for loss of quiet enjoyment, to recover moving and storage expenses which she was facing as a result of the Notices to End Tenancy served on her, and because of other emotional distress she suffered at the hands of the landlord. Specifically, the tenant sought:

Item	**Amount**
Return of Security Deposit	$600.00
Breach of Lease	2,400.00
Moving and Truck Rental	1,200.00
Cleaning of Suite	650.00
Cost of Food from May 1st to May 6th, 2017	291.58
Loss of Privacy	1,200.00
Return of Filing Fee	100.00
Storage of items from October 2017 to May 2018 (remainder of lease)	926.10
Damage and Loss under section 67 of the *Act*	27,632.32
Total =	$35,000.00

The tenant said that she was also looking to recover an award for her tenancy ending as a result of a lack of good faith on the part of the landlord in the issuance of a 2 month notice to end tenancy. The tenant continued by explaining that because the landlord had evicted her, she was forced to incur numerous expenses related to her pending move such as storage and a moving truck. For this, the tenant sought $2,126.10.

Other aspects of the tenant`s monetary claim centered on the losses she incurred as a result of the suite not being accessible until May 6, 2017, six days after her lease had begun. The tenant explained that the previous occupants of the suite had failed to move out at the end of April 2017 and had left the rental unit very dirty. As a result, the tenant was forced to find alternative accommodation, to purchase food outside of the home and spent an entire day along with her partner and daughter cleaning the rental unit. For this, the tenant sought $650.00 a figure which she arrived at on the basis of having 3 people clean the suite for 8 hours each. The tenant said she formerly ran a cleaning company, and this rate would be in line with what her company would have charged for this type of clean up.

The majority of the tenant`s claim centered on the damage and loss she felt she had suffered under the tenancy. The tenant sought an award of $27,632.32 for the stress and loss of peace and quiet she said had experienced.

The tenant detailed her experiences with the landlord, explaining that she had twice entered the suite (May 19, 2017 & July 17, 2017) without permission to do so, that she had made her children feel very uneasy, to the point where they no longer felt comfortable playing outside, and she had been repeatedly rude to her guests, rending the entire period of habitation stressful and uncomfortable.

As part of her evidentiary package, the tenant provided comprehensive written submissions, a timeline outlining her experiences with the landlord and a USB key containing an interaction with the landlord. The tenant's written submissions explain that the tenant was seeking, "the maximum compensation [for] the loss of peace, stability and a safe place to raise [her] children." These submissions continue by saying, "I have been harassed and threated by my landlord, in turn making me anxious, nervous, depressed, and feeling desperate about our living situation."

The landlord strongly denied all aspects of the tenant's accusations concerning an invasion of privacy and a loss of quiet enjoyment. The landlord acknowledged entering the suite on May 19th and July 17th, 2017; however, she explained that on May 19th she had been granted permission by the tenant's 11 year old daughter to enter the home, and on July 17th she said that she provided the tenant with an emailed notice that she would be coming to look into issues that had been reported with the fridge.

The landlord confirmed that she had in fact issued a 2 Month Notice to End Tenancy for landlord's use of property, but after its issuance had learnt that this type of Notice to End Tenancy cannot end a fixed-term tenancy. She said that it was for this reason she withdrew the notice. The landlord argued that the tenant had been issued subsequent notices to end tenancy for cause and for non-payment of rent.

During the hearing the landlord acknowledged that the tenant had suffered some loss as a result of the continued occupation of the rental unit by the previous tenants, though she questioned whether she should be held responsible for the food that the tenant had purchased during this time. She explained that the former tenants had refused to vacate the suite for May 1, 2017 when the applicant tenant was set to take possession of the suite and she was left little choice but to delay the move in date for the applicant tenant. The landlord disputed that the suite was not ready for occupation by the applicant tenant on May 6, 2017 or that it had been left dirty. She said that two cleaning people had attended to the unit for 5 hours each, that she herself had cleaned the unit, and that the carpets were steam cleaned prior to the applicant tenant's occupation of the unit.

A copy of the condition inspection report signed by both parties at the outset of the tenancy notes numerous items in the unit which required attention. On the final page of the condition inspection report, the tenant has written "unit required extensive cleaning on move in. Landlord says you can leave it in the same condition." A letter submitted to the hearing by the landlord explains that the condition inspection report was done by the tenant's former partner, and that the parties subsequently signed a mutual agreement to end tenancy removing the tenant's former partner from the tenancy agreement, and the tenancy continued with only the tenant and the landlord as parties to the agreement. In her letter, the landlord explained that she felt the existing condition inspection reported should not be valid as it was signed between the tenant's former partner and herself.

Analysis

The tenant is seeking a Monetary Order of $35,000.00. Among the items for which she is seeking compensation are a return of the security deposit ($600.00) and compensation for a breach of her fixed-term lease ($2,400.00). I explained to the tenant that because the tenancy was still on going at the time of hearing, that I could not consider the matter of the security deposit. The tenant's application for a return of the security deposit is therefore dismissed with leave to reapply.

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 her entitlement to a claim for a monetary award.

At the outset of the hearing the tenant explained that she was not disputing the notices to end tenancy and would be vacating the suite on September 30, 2017. I find in doing so, that the tenant has forfeited her right to apply for compensation related to the breach of a lease, and to the expenses sought related to moving and storage costs. While the tenant disputed the landlord's notices to end tenancy in her applications, during the course of the hearing she stated that she accepted the landlord's 2 Month Notice. In doing so, she chose to vacate the premises under her own volition.

The tenant argued that the repeated notices to end tenancy issued by the landlord led her to move out; however, no decision concerning these notices was reached at the hearing as the tenant said she had accepted them. Furthermore, evidence and testimony presented at the hearing by the landlord showed that she withdrew the 2 Month Notice issued to the tenant. The tenant's argument regarding the issuance of a 2 Month Notice is accordingly inconsequential, because the landlord was no longer seeking an order of possession based on a 2 Month Notice. The tenant's application for a monetary award related to a breach of a lease and for moving and storage costs is dismissed.

The tenant sought compensation for the money she was forced to spend as a result of the suite not being accessible for the first 6 days of her tenancy. She said that because of the previous tenant's continued occupation of the unit, that she was forced to find alternative accommodation and eat in restaurants, rather than in the house. I find the tenant has suffered a loss under section 67 of the *Act*, as her loss can be directly attributed a violation of the tenancy agreement. The landlord was contractually obliged to provide the suite for occupation starting on May 1, 2017. The tenant was forced to spend money because it was not ready on this date. Because of this I find that the tenant can recover the $291.58 she spent on food for the time period she was not in occupation of the suite.

In addition to the issues described by the tenant concerning the lack of access to the suite for the first 6 days of her tenancy, the tenant explained that once she finally gained access to the unit that it was not cleaned to an adequate standard. The tenant said that she herself, her partner and her daughter had to spend 8 hours each cleaning the suite. The landlord disputed this, arguing that she had hired cleaners, had herself cleaned the unit and had ensured that the carpet was steamed cleaned prior to the tenant's occupation. As evidence of the state of cleanliness of the suite, the tenant submitted photographs to the hearing showing among other things, furniture in the unit, a dirty stove top, patchy paint on the walls and other items that needed attention. The condition inspection report signed at the outset of the tenancy by the landlord and the tenant's former partner also shows that some cleaning was required in the unit when the tenant and her partner took possession of the rental unit.

While I acknowledge the steps that the landlord took to ensure that the suite was prepared for the tenant's arrival, I accept the tenant's testimony that an amount of cleaning was required in addition to the cleaning work which had already been performed. During the hearing the landlord maintained that the suite was clean and that the tenant had unrealistic expectations concerning the unit being completely

sanitary. I do not find this to be the case. The photos submitted to the hearing as part of the tenant's evidentiary package along with the condition inspection report show that items were left in the suite by the previous tenants and the cleaning which was required was not unreasonable and did not consist of the unit being completely sanitary. For these reasons, I award the tenant the $650.00 requested for cleaning.

The final aspect of the tenant's application for a monetary order concern $1,200.00 for loss of privacy as a result of the landlord entering the suite without permission and $27,632.32 for the loss of quiet enjoyment and stress associated with the tenancy. I will begin by examining the tenant's application for loss of privacy and then turn my attention to the loss of quiet enjoyment.

The tenant explained that the landlord twice entered her suite without permission. The first being May 19, 2017 with the second taking place on July 17, 2017. The landlord acknowledged entering the suite but argued that she had been granted permission by the tenant's daughter in May 2017 and that she had provided the tenant with written notice of her desire to enter the suite in July 2017. I find based on the evidence and testimony presented at the hearing by both parties that the landlord did not provide the tenant with proper notice of her desire to enter the suite.

Section 29 states;

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

The landlord testified that the tenant's daughter provided her with permission to enter the suite. The tenant's 11 year old daughter is not the tenant under the *Act*. The landlord could have called the tenant, sent the tenant a text message or asked the tenant's daughter to call her mother to the door if she had a pressing issue that needed to be discussed with the tenant (as was originally reported).

The second episode, involving the landlord entering the suite without the tenant's permission concerned an event that took place on July 17, 2017. Again, the landlord did not deny entering the suite but rather argued that she had provided the tenant with written notice informing her of her intention by email to enter the suite. Emailed notice is not a recognized form of service under section 29 of the *Act*. Furthermore, the purpose for entering the suite must be *reasonable*. The emails dated July 17, 2017 submitted at the hearing by the landlord show that her purpose for entering the suite was to determine if $200.00 worth of food was spoiled overnight. I do not find this to be a reasonable purpose for entering a tenant's suite.

I find the tenant is entitled to some compensation under section 67 of the *Act* due to the illegal entry of her suite by the landlord; however, I find the tenant's request of $1,200.00 to be excessive. The tenant was unable to justify how she suffered damages of $600.00 per episode.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right

I find an award of $50.00 per entry to be an appropriate award. This amount would allow the tenant to recover some money associated with her claim of loss of groceries and for the discomfort she experienced as a result of the landlord's violation of the *Act*.

The tenant said that she sought $27,632.32 for the loss of, "peace, stability and a safe place to raise [her] children." The tenant explained that she wanted, "the maximum compensation" for the loss that she suffered. After considering the tenant's testimony and reviewing her written submissions and evidence, I do not find that the tenant is entitled to compensation under the *Act* for the situations that she described. As mentioned above, Section 67 of the *Act* explains that, "the claimant must prove the existence of the damage or 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."

I am not satisfied that the landlord's actions in failing to adhere to the *Act* justify the monetary order sought. Furthermore, Section 16 of the *Residential Tenancy Policy Guideline* describes the purpose of compensation. It states, "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred…the party who suffered the damage or loss must prove the amount of or value of the damage or loss."

Section 28 of the *Act* states, tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance.

This issue is expanded upon in Section 6 of the *Residential Tenancy Policy Guideline* which says, "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 of a breach of the entitlement to quiet enjoyment."

After having reviewed the emails contained in the tenant's evidentiary package, it is apparent that the relationship between the landlord and the tenant soured towards the end of the tenancy, while previous exchanges between the parties show that they originally maintained a somewhat harmonious relationship. I do not find evidence that the landlord *substantially* interfered with the ordinary and lawful enjoyment of the premises. In her emails to the tenant, the landlord felt she was justified in the issuance of her notices to end tenancy; furthermore, I note the evidence of attempts by the landlord to placate the tenant when situations arose which required a pragmatic solution, such as the offer of the use of the landlord's fridge when the tenant's own fridge broke. For these reasons, the tenant's application for a monetary award for loss of quiet enjoyment is dismissed.

As the tenant was partially successful in her application, she may recover the $100.00 filing fee from the landlord.

Conclusion

I am making a Monetary Order of $1,141.58in favour of the tenant as follows:

Item	**Amount**
Cost of Food for May 1 to 6, 2017	$291.58
Cleaning of Suite	650.00
Illegal suite entry	100.00
Return of Filing Fee	100.00
Total =	$1,141.58

The tenant is provided with formal Orders in the above terms. Should the landlord fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: October 2, 2017

Residential Tenancy Branch