



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR, FF

Introduction

This hearing was scheduled to consider the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary award for damages and loss pursuant to section 67;
- an order that the rent be reduced pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord DG primarily spoke on behalf of both co-landlords (the "landlord").

As both parties attended the hearing, I confirmed there were no issues with service. The parties confirmed receipt of one another's materials. I find that the parties were served respectively with the landlords' 1 Month Notice, the tenant's application for dispute resolution and subsequent amendment, and the evidence packages in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Is the tenant entitled to a monetary award as claimed?

Should the rent be reduced for services or facilities agreed upon but not provided by the landlords?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in May, 2015. The monthly rent is \$575.00 payable on the 1st of each month. The tenant paid a security deposit of \$300.00 at the start of the tenancy which is still held by the landlord.

The rental unit is the basement suite of a detached home. The landlords and their family reside in the main floor unit. The tenant testified that since moving in the landlords, their children and other children have constantly made noise both in the upstairs unit as well as in the neighborhood. The tenant said that the noise is constant and at such a volume that it disrupts her from her daily routines. The tenant said that when she has requested the noise level be decreased she has been met with snide remarks and condescending comments from the landlords.

The tenant testified that the rental unit is in a state of disrepair and that the landlords have failed to take adequate steps to perform repairs and maintenance. The tenant submitted photos of the rental unit which she alleges show the condition of the suite. The tenant also gave evidence that the internet for the rental unit, an amenity included in the tenancy agreement, is intermittent and rife with connectivity issues.

The landlords dispute the tenant's claims. The landlord states that the noise level of their family and guests is not excessive. The landlord testified that they have performed repairs to the rental unit when requested by the tenant. The landlord said that they have not been contacted by the tenant for repairs to some of the items that she claims in the present application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a partial resolution of the issues in dispute.

Both parties agreed to the following final and binding settlement of the following issues currently under dispute at this time:

1. This tenancy will continue pursuant to the tenancy agreement and will end on 1:00 pm, December 31, 2017, by which time the tenant and any other occupants will have vacated the rental unit.
2. This settlement agreement constitutes a final and binding resolution of the tenant's application to cancel the landlords' 1 Month Notice at this hearing.
3. The landlords' 1 Month Notice is cancelled and of no further force or effect the parties agree that this tenancy will end by way of their mutual agreement.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle the issue of the cancellation of the landlords' 1 Month Notice.

The parties were not able to come to an agreement in regards to the other aspects of the tenant's claim and I make my finding on those issues.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. This section is read in conjunction with section 65 of the *Act* to issue an order that the rent for a tenancy may be reduced. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses 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 a 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.

I find that the tenant has not shown on a balance of probabilities that there has been any violation of the Act, regulations or tenancy agreement by the landlords that gives rise to a claim in damages.

The tenant complains of the noise generated by the landlords and family members. I find that the tenant's notes and testimony do not indicate that the noise level was extraordinary or in excess of what a reasonable person would expect from a family with children. I do not find sufficient evidence to conclude that the noise level of the children playing creates an unreasonable disturbance. It is reasonable to expect that children will run, jump, shout, laugh and play. Based on the totality of the evidence I find that the noise the tenant complains of is no more than that which would reasonably be expected. I find that while there is some discomfort and inconvenience caused by the sounds, there is no evidence before me that it is of such magnitude that it would be characterized as an unreasonable interference.

The burden of proof rests with the tenant to show that the behaviour of the landlords was such that it transcended the ordinary level expected from a reasonable neighbor. Sound is an unavoidable reality of living in a community with other people. I do not find that the tenant has provided sufficient evidence to demonstrate that the level and frequency of any disturbance caused by the sounds of the landlords warrants a monetary award.

I find that the tenant has not provided sufficient evidence to show that the landlords have not provided facilities or services agreed upon in the tenancy agreement. I find the tenants testimony and photographs to be insufficient to conclude that the rental unit is not properly maintained. I find that the tenant has not met the burden of proof to show evidentiary basis for a monetary claim. Consequently, I dismiss this portion of the tenant's claim.

As the tenant was unsuccessful in her claim she is not entitled to recover the filing fee for this application. The *Act* does not allow a party to recover the costs of such items as printing, paper and mail in any event. I dismiss this portion of the tenant's application.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be served on the tenant by the landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on December 31, 2017. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The balance of 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: November 29, 2017

Residential Tenancy Branch