Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for loss of quiet enjoyment, moving costs, loss of wages and alternate accommodations.

Both parties attended the hearing. The parties acknowledged exchanging document evidence. They were further provided opportunity to present all relevant evidence and testimony in respect to the tenant's claims and to make relevant prior submission to the hearing, ask questions and fully participate in the conference call hearing. The parties were also provided opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to compensation in the monetary amount claimed?

Background and Evidence

I do not have benefit of the tenancy agreement; however the parties agreed the tenancy began June 15, 2016 with rent at $ 2,000.00 per month. The tenancy ended March 31, 2017 resulting from an Arbitrator's Order dated March 22, 2017 following the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the Notice to End). The parties agreed that the tenant rented solely the upstairs portion of a house and which house also contained a separate suite in the basement occupied by 2 individuals at the outset of the applicant's tenancy. It is relevant to this matter that the tenant's rent included the use of laundry facilities for the applicant's exclusive use situated in the basement of the house to which the tenant originally had unrestricted access. The tenancy agreement also included the use of a 2 car carport area and limited space in the backyard portion of the property. It is relevant to this matter that the parties agreed the rear of the residential property contained a sizeable vegetable "garden" of approximately 24x30 feet situated as close as 2 feet from the tenant

balcony's end. The parties agree that the basement accommodations were not authorized by the local government, which the parties have referred to as "illegal".

The tenant testified to experiencing a loss of quiet enjoyment, primarily from what they describe as, "an improper use of the house". The parties agreed that the landlord's parents visited the residential property daily to tend the garden plot, trim trees, water the garden and generally be on the property daily for large portions of the day, sometimes hosting others visiting the property. The tenant claims they experienced an abundance of talking sounds, slamming gates, gardening commotion and simply the din and presence of others, which the tenant claims was constant and made them feel uncomfortable. The tenant testified the constant outside commotion intruded on their privacy. The tenant recalled that they could not enjoy their balcony due to the continual goings on in the back yard. The landlord acknowledged the presence of the landlord's parents on the property almost every day during the summer to the end of the growing season as they tended to the growing crop of vegetables and the need for watering.

Both parties acknowledged the residential house was not "soundproofed". That is, no extraordinary sound abatement measures were added to the house. The tenant testified one could hear everything between the upper and lower suites and each tenancy complained of noise from the other which evolved into ongoing dispute and involvement of the landlord. The landlord testified the house was a normal house without soundproofing and they reminded all tenants to minimize intrusive sound from their unit.

In addition the tenant testified the laundry room of the tenancy was situated in the basement in a manner requiring the tenant to walk by the basement tenant's washroom to access the laundry room. The tenant testified it made them feel uncomfortable as they felt they were intruding in the other tenant's private space. The landlord testified it should not have been an issue and they did not control the laundry room access. Subsequently the parties found a compromise.

Additionally, the tenant testified that parking on the residential property was sometimes hectic due to the growing number of vehicles belonging to all the property occupants, including the applicant, with no available street parking. The tenant also acknowledged that despite having access to the carport they used it in combination as storage space, allowing only half a car in the carport. The landlord testified they did their best to mediate the parking matters to the point of assigning and designating parking spaces.

The tenant argued that had the landlord not made the basement area available for

another suite in the first place they would not have experienced their issues with the laundry area, the parking of cars and conflict over sounds between the suites. The landlord did not excuse the unauthorized suite and testified they attended to issues as they arose between the tenants and at all times were diligent and fair in their treatment of all tenants with a view to please all the tenants.

The tenant seeks compensation equalling 50% of the total rent paid during the tenancy.

The tenant argued that if the landlord had not chosen to rent out an unauthorized suite in the basement then 1) the City would not have ordered its end, 2) they would not have received a Notice to End ,3) they would not have disputed it, 4) they would not have been ordered to vacate as a result and, 5) they would not have had to move within a short period. The landlord argued the tenant chose to ignore the possibility the Notice to End due to the City's order might be upheld in Arbitration and did not plan for an alternate or more orderly exit from the unit. The tenant claims the landlord is responsible for the cost of their rental of a storage container (Big Steel Box) for having to vacate on short notice, in the amount of $648.48. The tenant also seeks loss of wages in the amount of $100.00 and alternate accommodation costs of $400.00, again all predicated on the landlord's initial choice to rent out the unauthorized basement suite.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: ***www.gov.bc.ca/landlordtenant.***

I find that the testimony of both parties was matter of fact and unembellished. I note that both parties were sincere in their presentations they believed their expectations and conduct at all times during the tenancy were reasonable.

I find it is irrelevant whether the basement rental unit was authorized by the City. The applicant did not rent the whole house and the landlord was at liberty to provide housing to others in the basement and chose the risks associated with doing so. I find the tenant's expectations in respect to the use of the laundry room less than reasonable. The laundry situation was not portrayed in testimony as ideal and I accept it made the tenant feel uncomfortable. None the less, I cannot but be mindful that the laundry issue in this matter does not involve complaint of inaccessibility to laundry, inoperative or malfunctioning laundry machines, removal of laundry facilities without compensation, or other issues often associated with laundry facilities in other tenancy agreements.

Moreover, I am satisfied the tenant received that for which they contracted with the landlord vis a vis laundry facilities.

I find it difficult to hold anyone in particular accountable for parking related issues on the residential property. I find that when it comes to parking matters there are always many moving parts and I accept the landlord attempted to clearly delineate, assign, and otherwise control the parking without success. I also find that parking matters can easily be acerbated by a disputatious relationship in the residential property. However, I find that the parties agreed at the outset of the tenancy that the rent included the use of the carport for parking and I am satisfied the tenant received that for which they contracted by way of the carport. However, the tenant chose to use it for another purpose.

I find the tenant's claim for the landlord to pay for the tenant's choice of storage (Big Steel Box) does not make sense. I find the tenant chose to rely on not having to vacate when they filed for dispute resolution and to the tenant's surprise the matter did not go in their favor. Contrary to the tenant's thinking I find the tenant's need for paid storage, lost wages and alternate accommodations did not result from the landlord renting out an unauthorized suite, but from an Arbitrator's Order ending the tenancy post haste. As a result, I dismiss these portions of the tenant's claim.

However, I find the tenant's expectations reasonable in respect to the back yard vegetable "garden" and its daily use by the comings and goings of the landlord's parents and guests. I find that when a tenant is held to pay $2000.00 per month it is unreasonable they be made to endure the daily intrusions presented by all the "garden" related circumstances presented in this matter. I am further mindful the landlord no longer permits the "garden" to exist in the current tenancy, claiming to have "learned" from the previous experience at hand.

Section 28 of the Residential Tenancy Act, in part states

Protection of tenant's right to quiet enjoyment

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;

Pursuant to common law every tenancy agreement contains an implied covenant of quiet enjoyment promising that a tenant shall enjoy the possession and use of their rental unit without undue disturbance. In a tenancy relationship, the covenant of quiet

enjoyment protects the tenant's right to freedom from serious interference to the tenancy. On preponderance of the evidence and on balance of probabilities in this matter I find that the "garden" related circumstances presented in this matter largely interfered with the tenant's right to reasonable privacy and right to freedom from unreasonable disturbance. As a result I find the tenant is entitled to be compensated for the abridgement of these rights.

In determining the amount by which the value of the tenancy agreement has been reduced, I have taken into consideration the seriousness of the situation, the degree it affected the tenant's ability to use their premises and the length of time over which the situation existed. I accept the parties agreed evidence and find that the disturbance to the tenant's right to quiet enjoyment spanned from the outset of the tenancy to the end of the garden growing season, which I set at October 15, 2017, or 4 months.

I set the reduction to the value of the tenancy agreement at one third of the total value of the agreement, which effectively is an award of $666.66 per month for each of the 4 months for a sum of **$2666.64.**

> I grant the tenant a monetary Order under Section 67 of the Act for the amount of $**2666.64**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in the above terms. I have dismissed all other claims by the tenant without liberty to reapply.

This Decision is final and binding.

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: December 20, 2017

Residential Tenancy Branch