



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC ERP OLC PSF RP RR FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated September 12, 2017 (the "Application"). The Tenants 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 that the Landlords make emergency repairs for health or safety reasons;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlords provide services or facilities required by law;
- an order that the Landlords make repairs to the unit, site, or property;
- an order that rent is reduced for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing in person and provided affirmed testimony. The Landlords did not attend the hearing.

The Tenants testified that Landlords were served with the Application package by registered mail on September 22, 2017. A Canada Post customer receipt was submitted in support, in addition to tracking information confirming receipt of the Application package on September 26, 2017. I find the Landlords received the Application package on September 26, 2017.

The Tenants submitted a further documentary evidence package, which was received at the Residential Tenancy Branch on November 20, 2017. The Tenants testified the package was sent to the Tenants by registered mail on November 17, 2017, and that tracking information confirmed the package was received by the Landlords on November 20, 2017. I find the documentary evidence package was received by the Landlords on November 20, 2017.

The Tenants were 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 parties confirmed the Tenants vacated the rental unit on or about October 8, 2017. Accordingly, it is not necessary for me to consider the Tenants' requests for the following:

- an order that the Landlords make emergency repairs for health or safety reasons;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlords provide services or facilities required by law;
- an order that the Landlords make repairs to the unit, site, or property; and
- an order that rent is reduced for repairs, services or facilities agreed upon but not provided.

Issues to be Decided

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

Background and Evidence

The Tenants testified to the terms of the tenancy agreement. The tenancy began on August 23, 2014, and ended on October 8, 2017. At the end of the tenancy, rent was due in the amount of \$1,100.00 per month.

The Tenants' claims were summarized in the Application. First, the Tenants sought \$460.00 for moving expenses at the end of the tenancy. In written submissions and during the hearing, the Tenants confirmed they moved out voluntarily in response to a notice given by the Landlords.

Second, the Tenants sought a 20% rent reduction for a loss of quiet enjoyment of the rental unit. The K.B. testified that on or about Father's Day 2017, the Landlords "blasted" music from their unit. The Tenants were unsure of the reason for doing so but K.B. acknowledged there had been a falling out between her and R.C. Despite repeated requests by phone and text, the Landlords continued to play music loudly during the day and into the evening, whether or not the Landlords were home. This was particularly disruptive to T.G., who works evenings and sleeps during the day. K.B. testified the music volume was reduced on or about August 9, 2017.

Third, the Tenants sought \$56.95 for mail forwarding services. K.B. testified the Tenants stopped receiving mail in July and August 2017. Things like bills and other correspondence were not being received. The Tenants set up mail forwarding at Canada Post and mail was received at the new address. Subsequently, on September 12, 2017, K.B. went to the mailbox and noted the key no longer worked. Police attended and spoke to the Landlords. K.B. testified that the police officer returned from the discussion with the Landlords and advised the Tenants that the Landlords had changed the locks, and provided the Tenants with a functioning key.

Analysis

Based on the unchallenged documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me 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. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for moving expenses, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought. The undisputed testimony is that the Tenants vacated the rental unit voluntarily on October 8, 2017.

With respect to the Tenants' claim for compensation for loss of quiet enjoyment, section 28 of the *Act* confirms that this right includes "reasonable privacy...freedom from unreasonable disturbance...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*]...[and] use of common areas for reasonable and lawful purposes, free from significant interference".

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:

- *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.]

In this case, I find the Tenants have demonstrated an entitlement to compensation for loss of quiet enjoyment of the rental unit. The undisputed evidence is that the Landlords "blasted" music, which was not turned down despite repeated requests. I find this amounted to a frequent and ongoing interference. I find the Tenants are entitled to

compensation in the amount of \$440.00, which represents a 20% rent reduction for the (roughly) two month period during which the Landlords' music disrupted the Tenants' quiet enjoyment of the rental unit.

With respect to the Tenants' claim for \$56.95 for mail forwarding services, I find it is more likely than not that the Landlords disrupted the Tenants' mail service in July and August 2017, and subsequently changed the lock on the community mailbox. Accordingly, I find the Tenants are entitled to recover \$56.95 for the cost to redirect mail.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, the Tenants are granted a monetary order in the amount of \$596.95, which is comprised of \$440.00 for loss of quiet enjoyment, \$56.95 for mail forwarding charges, and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$596.95. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 8, 2017

Residential Tenancy Branch