



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHISTLER PROPERTY SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR FFT

Introduction

This hearing was convened in response to an application by the tenant October 17, 2017 for a reduction of rent, under the *Residential Tenancy Act* (the Act). I accept the tenant applied for compensation in respect to loss of quiet enjoyment. The tenant also seeks to recover their filing fee.

Both tenants and the landlord's representative/agent (the landlord) attended the hearing. The landlord acknowledged receiving the evidence of the tenant. The tenant claims they had not received the landlord's evidence which the landlord provided they sent the tenant by registered mail on December 20, 2017. The landlord provided the tracking information which further provided that the tenant was notified of registered mail available at their post office. I accepted the landlord submitted their evidence in accordance with the Act and Rules of Procedure. Both parties were further provided opportunity to present relevant evidence via testimony in respect to the application, ask questions and 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. I have considered all relevant evidence admissible in accordance with the Rules of Procedure.

Issue(s) to be Decided

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

Background and Evidence

I have benefit of the tenancy agreement. The tenancy started June 2016 and continues. The current payable rent is \$3800.00 per month. The parties submitted that the rental unit of this matter (130) is a strata owned unit adjoining another strata property of a different owner (unit 131). The landlord testified that the adjacent strata unit was acquired by the current owners in August 2016. The parties agreed that the adjacent unit 131 started being extensively renovations in April 2017. The tenant testified they were notified prior to the start of renovations of the upcoming work by the contractor tasked for the work.

The tenant claims that from the outset of the renovations there were issues of noise and vibration emanating from the adjacent unit. The tenant claims there were indications of removal of drywall and insulation and replacement of plumbing, bathroom fixtures, cabinetry and flooring. At some point there was use of a jackhammer. The outdoor area accommodated trucks, delivery and other vehicles of the workers, whom also used the outdoor area for staging various work projects and causing ingress and egress inconvenience for the tenant's vehicles. The tenant testified that from the outset the contractor for the work next door was accommodating to the needs and concerns of the tenant to the best of their ability, given that which they were tasked. The tenant does not take issue with the contractor's responses to the tenant's concerns and issues in this matter.

The tenant testified that the issues forming the "unreasonable" portion of disturbance from the next door renovations occurred in the months of April through August 2017 and that the work continues, albeit with less commotion as the work has progressed to finishing work within the unit. The tenant provided a series of photo images attesting to the nature of the work which transpired next door.

The landlord testified that in late September 2017 the tenant alerted the landlord of the issues of having to live beside a renovation site. The tenant complained about dust and debris from the neighbouring work. The landlord testified that neither they nor the actual owner of the rental unit were alerted by the Strata or the owner of the adjacent unit that renovations would be occurring in 2017. The landlord testified they spoke to the Strata, the contractor, and the rental unit owner in attempts to mitigate the impact of the renovation work or obtaining compensation for the tenants. They acknowledged that neither they nor the owner of the rental unit had control over the matter and that the adjacent owner's work was sanctioned by local government permitting. The landlord was satisfied that the contractor used due diligence, doing what they could to be mindful of the tenant by routinely hosing off the tenant's vehicle and ensuring the site was free of nails and other problem debris.

The tenant seeks compensation of \$500.00 for each of seven months from April to October 2017 for loss of quiet enjoyment of the rental unit, although acknowledging that after August 2017 any disturbance they experienced was no longer within the realm of unreasonable disturbance. The tenant testified that they are turning to the landlord for lack of other recourse and for financial compensation for lack of other realistic resolve to their matter.

The landlord argued they took what reasonable measures they could upon learning of the tenant's dissatisfaction but that the circumstances were effectively unavoidable and beyond their control. And, in the absence of goodwill authorized by the owner toward a reduction of rent, that their hands are tied.

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 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 by the landlord, or forces within the control of the landlord through reasonable intervention. As aptly provided by the tenant in this matter, **Section 28** of the Act obligates the landlord to protect the tenant's right to quiet enjoyment by taking reasonable steps to do so. As further aptly provided by the tenant, **Residential Tenancy Policy Guideline 6 – Entitlement to Quiet Enjoyment** further explains how Section 28 operates in respect to the tenant's circumstances in this matter. Unless the landlord themselves are the cause of the noise, dust, and other related intrusion a landlord cannot be held accountable for these impacts to a tenant's entitlement to quiet enjoyment if they do not know of a breach or are powerless to remedy the issues. In this matter, I find the latter is relevant.

While I accept that the tenant has been inconvenienced and the evidence is that they have clearly been disturbed by certain ongoing activities attributable to their neighbour's renovations, I prefer the landlord's evidence that the circumstances were authorized by local government, with the knowledge of the Strata, and despite taking reasonable steps to satisfy the tenant the circumstances the tenant describes were unavoidable and beyond their control. I find that in the landlord's position of doing what they reasonably could the landlord is not liable for the tenant's claim of compensation for loss of their quiet enjoyment. As a result I must **dismiss** the tenant's claim.

Conclusion

The tenant's application is dismissed, without leave 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: January 11, 2018

Residential Tenancy Branch