Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MET CAP LIVING MANAGEMENT and IMP POOL XII LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for $35,000.00 for damages or loss under the Act, regulations or tenancy agreement; and, "other" unspecified remedies. The landlord was represented by legal counsel and two property managers. The female tenant appeared as the primary speaker on behalf of both tenants. The tenant stated that her husband was listening to the proceeding but that he would not be speaking.

Preliminary and Procedural Matters

1. Amending name of landlord(s)

The landlord's counsel pointed out that the tenants named the property management company as being the landlord on the Application for Dispute Resolution. Landlord's counsel requested that the name of the landlord be changed to reflect the owner of the property. The tenant stated she only deals with the property management company. I explained to both parties that the definition of "landlord" under the Act includes the owner of a rental unit and the owner's agents, such as a property manager, meaning both an owner and a property manager are a "landlord" under the Act. With consent of both parties, the tenant's Application for Dispute Resolution was amended to name the landlord as being the property management company and the owner of the property.

2. Service of hearing documents and evidence

At the outset of the hearing, I explored service of hearing documents upon each other and the Residential Tenancy Branch. I confirmed that the tenants' Application was delivered to the landlord in person in July 2017. The Application was not accompanied by any evidence or written submissions other than the few sentences that appeared in the "Details of Dispute" box on the application itself. In the Details of Dispute the tenant wrote:

> "Since January 2016 landlord start renovation inside building, and in May 2017 starting outside on the balconies with lots of noise and dust until now. My husband and I have medical conditions and now more sick in our home. Landlord did not provide us with what they promised."

During the hearing, the tenant stated the balcony renovation started May 2016 and that writing May 2017 was in error. I amend the tenants' Application to read "May 2016" instead of May 2017.

In late November 2017 the landlord's counsel submitted to the Residential Tenancy Branch and served upon the tenants a sizeable evidence package containing 113 pages in response to the tenants' Application for Dispute Resolution.

On December 22, 2017 the tenants submitted to the Residential Tenancy Branch and served upon the landlord an evidence package of 30 pages. Most of the documents are dated in 2016.

The Rules of Procedure provide rules for ensuring a fair proceeding, among other things. Rules 2.5 and 3.1of the Rules of Procedure in effect when this Application was made, require an applicant to submit and serve evidence at the same time as the Application for Dispute Resolution to the extent possible. Rules 3.11 and 3.14 provide that if evidence is not available at that the same time as making the Application, the evidence is to be served as soon as possible but no later than 14 days before the hearing date. Further, an Arbitrator may refuse to consider evidence that is unreasonably delayed.

The landlord's counsel confirmed that the landlord's evidence package was prepared without having seen the tenant's documents, except for tenants' Application for Dispute Resolution. The tenant was asked why there was a delay in providing the tenants' evidence. The tenant responded by stating they had 14 days before the hearing to provide their evidence and they met that deadline.

3. "Other" remedies sought

As for indicating "other" on the Application for Dispute Resolution and the "promise" referred to in the Details of Dispute, the tenant explained that at the time of filing the tenants were seeking relocation to another rental unit. The tenant confirmed that at the time of the hearing the tenants no longer wish to relocated. Accordingly, I did not consider this request further.

4. Monetary claim calculation and full particulars

Section 59 of the Act provides that an Application for Dispute Resolution must "include <u>full particulars</u> of the dispute that is to be the subject of the dispute resolution proceedings".

In keeping with the requirement to provide “full particulars”, Rule 2.5 of the Rules of Procedure require an applicant to provide “a detailed calculation of any monetary claim being made”. In the space for identifying the amount of compensation claimed on the Application for Dispute Resolution, it states: “Provide a detailed calculation in *Monetary Order Worksheet* (form RTB-37) or “Details of Dispute” below. In this space for providing “Details of Dispute” the Application for Dispute Resolution instructs applicants to provide the details of dispute and attach a separate page(s) if necessary and to “Provide a detailed calculation of any monetary claim below or attached using *Monetary Order Worksheet* (form RTB-37).”

The tenants did not provide any calculation in the Details of Dispute, did not prepare a Monetary Order worksheet, or otherwise specify the losses for which they seek compensation in the amount of $35,000.00.

The landlord’s counsel confirmed that the landlord is unaware of the specific losses the tenants are seeking to recover from the landlord. The landlord’s counsel stated the landlord seeks to have this Application proceed or dismissed but the landlord was not agreeable to any adjournments or further delays in resolving this matter. The landlord was open to allowing the tenant the opportunity to describe the tenants’ losses. I proceeded to explore the tenants’ basis for seeking $35,000.00 in compensation from the landlord.

There is no dispute that the landlord undertook significant renovation activities at the residential property where the rental unit is located. The tenant described the tenants’ losses as being loss of heath, suffering, and the inability to work since the landlord started renovation work at the property in January 2016. The tenant stated that the tenants should be compensated from January 2016 onwards. As for the amount claimed, the tenant stated that she had initially wanted to seek compensation of $1,000,000.00 from the landlord but was informed that the maximum claim is $35,000.00 so the tenants claimed the maximum allowed. I informed the tenant that a tenant may pursue a landlord for compensation in excess of $35,000.00 through *The Supreme Court of British Columbia*. The tenant stated she did not want to go through Supreme Court. As for how the tenants determined they had suffered losses of at least $35,000.00 or $1,000,000.00 the tenant responded by stating that it is difficult to value one’s health and indicated her husband was unable to work and the tenant stated I should calculate the amount. I reminded the tenant that it is upon the tenants to present their claim to me.

Considering the Details of Dispute indicate the tenants were troubled by noise and dust during the renovation, which could constitute a loss of quiet enjoyment, I explored the amount of rent the tenants paid between January 2016 and the time of filing their claim in July 2017. I heard that from January 2016 through June 2016 the tenants’ rent obligation was $1,725.00 per month and from July 2016 through June 2017 it was $1,775.00; and, starting July 2017 rent increased to $1,840.67. Using these amounts, I calculate that the tenants paid $33,490.67 in rent for the months of January 2016 through to July 2017. Meaning, if the tenants were to succeed in their claim for $35,000.00 the landlord would be in effect paying the tenants to live in the rental unit. I find such a claim for loss of quiet enjoyment to be unreasonable.

I am also of the view that if the tenants were suffering so horribly as to warrant the compensation they are seeking they would have made an Application for Dispute Resolution much sooner. Instead at least 18 months elapsed before the tenants made an Application for Dispute Resolution.

Monetary Orders are made pursuant to sections 7 and 67 of the Act. Accordingly, an applicant has the burden to prove all of 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 whatever was reasonable to minimize the damage or loss.

Given the tenants' lack of a detailed monetary calculation or outline of specific monetary losses, the unreasonableness of the amount claimed, and the tenants' failure to make an Application for Dispute Resolution much sooner, I was of the view that the tenants' claim for $35,000.00 would not succeed even if loss of quiet enjoyment was found. Therefore, I find it appropriate to dismiss the tenants' application.

Considering the landlord had already expended resources in compiling a considerable evidence package and hiring legal counsel, I was of the view that to dismiss this application with leave would be prejudicial to the landlord. Therefore, I dismiss the tenant's application 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: January 11, 2018

Residential Tenancy Branch