Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: PSF, OLC, MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. An order that the landlord provide services or facilities required by the tenancy agreement or by law.
b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
c. A monetary order in the sum of $4810
d. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to an order that the landlord provide services or facilities required by the tenancy agreement or by law.
b. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement.
c. Whether the tenant is entitled to a monetary order and if so how much?
d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on April 1, 2017 and end on March 31, 2018. The present rent is $1062 per month payable in advance on the first day of each month. The tenant paid a security deposit of $531.25 and a pet damage deposit of $531.25 on February 27, 2017.

The Tenant gave the following evidence:

- The tenant testified she has been treated in a prejudicial manner by the landlord.
- The landlord refused to rent the rental unit when she initially applied. Eventually the landlord agreed to rent it on the condition the Tenant pay 6 months rent in advance before she move in. The tenant submits this is contrary to the Residential Tenancy Act and illegal.
- She testified she suffers from PTSD. She worked as a paramedic and has been a strong advocate in forcing the Work Safe to change their position and recognize PTSD as a work related compensable injury.
- She was a strong advocate in forcing the landlord to reimburse Tenants for charging for parking which the landlord was not permitted to do. She has had 2 years of law school and other tenants often approach her for advice on how to deal with the landlord.
- The tenant objected to the manner in which the landlord dealt with the amenities room. At one stage the landlord permitted Tenants to book it on an individual basis. However, the landlord has since refused to take individual bookings and the room cannot be booked for individual resident functions. This occurred in October 2017.
- The Tenant objected to the decision of the landlord to refuse to allow Tenants to put messages on the bulletin board. She testified this was permitted at one time. The landlord now refuses to allow private messages on the bulletin board stating this is for the landlord's use only. The refusal of the landlord to allow private messages on the bulletin board started in June 2017. The landlord has instructed the cleaning staff to remove these messages.
- The rental property is new. The tenant experienced a problem with the toilet seat and it needed to be replaced. The landlord refused to fix it and the Tenant paid $24.88 to purchase a new toilet seat. The landlord refused to reimburse the Tenant alleging the tenant broke it.
- The Tenant testified she was ill with the flu and fell hitting her head because of the lack of the toilet seat. She was concussed and taken to hospital.
- The Tenant deducted the money she paid to purchase the toilet seat when she paid the rent for October. The landlord posted a 10 day Notice to End Tenancy on her door. This was witnessed by other Tenants. However, she was out at the

time and before she could get a copy the landlord removed it. When she contacted management they told her there was no record of the service of the 10 day Notice and they denied giving it to me. She produced evidence from other Tenants who witnessed it. The Tenant subsequently paid the rent in full.

- The tenant complained about the resident manager continually knocking on her door or phoning her rather than leaving a message when they want to fix something in her apartment.
- On November 30, 2017 she received a breach letter that alleged that on November 24, 2017 that she and 3 of her friends disrespected and disrupted the pace and quiet enjoyment of their Resident Manager. The letter alleges this disruption lasted for 10 to 15 minutes. The Tenant disputes the basis of this breach letter. The alleged guests were in fact other Tenants. The breach letter was not signed.
- On December 5, 2017 she received a second breach letter. That letter alleges they had received multiple complaints from other residents in the building that she has been disrupting their peace and quiet enjoyment by either knocking on their doors when they are home, posting notices in the elevator or dropping letters in their mailbox. The letter states she is not to post anything throughout the rental property unless she obtained the written approval of management.
- The tenant disputes the allegation in the letter. The tenant testified she has talked to the Manager and he advised her that he has been instructed by management that if he does not follow up on this he will lose his job.
- The Tenant testified the agent for the landlord broker her headboard when she moved in.
- The Tenant seeks compensation of $4810 for the breach of the covenant of quiet enjoyment based on the following:
    - On more than 20 occasions the landlord has knocked on her door or phoned her to try to gain access rather than serving a Notice as provided in the Act.
    - The landlord has prohibited the posting of messages.
    - The landlord has harassed her as evidenced by the letters of November 30, 2017 and December 5, 2017.
    - The landlord required the rent be paid through Rent Moola,
    - The landlord required 6 months rent paid up front.
    - She e-mailed the landlord on many occasions but the landlord has failed to respond.
- The Application for Dispute Resolution states there are 4 police files. However, the evidence presented by the parties at the hearing failed to sufficiently indicate the nature of the files and how they relate to the matters in dispute.

The landlord gave the following evidence:

- The tenant's Credit history did not meet the minimum requirements and as a result the landlord was not prepared to rent the tenant to her. The Tenant became very emotional. He agreed to her proposal that she would pay the 6 months up front. The overpayment was returned in June shortly after the Tenant demanded the re-payment.
- The landlord objected to an article written in the Georgia Straight after the tenant was interviewed and she allegedly stated the landlord told her that people with PTSD are murderers. He said he never said this. The tenant later testified the reporter misstated this information.
- The landlord denied that the landlord is harassing the Tenant. The lounge is open to all residents. The landlord determined it was not appropriate for tenants to book it privately.
- The bulletin board is the landlord's property. The landlord determined it was not appropriate to allow for private postings. It creates damage and is aesthetically unpleasant. The landlord is concerned it might be used inappropriately by tenants.
- The rental property is new and the tenant is an original tenant. The only conclusion the landlord can come to is the tenant damaged the toilet seat and is responsible for it.
- Management has no record of serving the Tenant with a 10 day Notice to End Tenancy.
- Management will phone a Tenant in the rental property where a problem has been reported by a Tenant and a repair person is on site. If the tenant is prepared to give the repair person access it will reduce the time for the repair to be completed.
- The two breach letters were given to the Tenant after hearing from the Resident Manager.
- The landlord denied the tenant's headboard was damaged by an agent of the landlord.
- The landlord denied the allegations relied on by the Tenant that the landlord has harassed the tenant. He referred to pages 15 to 35 of the landlord's materials which show the landlord and tenant exchanging e-mails.
- The landlord disputed the allegations with regard to the payment of rent through the method the landlord proposed. He testified this is a green concept and facilitates the orderly payment. In any event the landlord has accepted payment by another method that is being used by the Tenant. .

Analysis – Application that the landlord provide services or facilities required by the tenancy agreement or be law:

Unfortunately both parties are not making reasonable efforts to work together.

Section 28 of the Residential Tenancy Act provides as follows:

> **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:
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> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) 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]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant failed to prove the Residential Tenancy Act, regulations or the tenancy agreement including the additional terms gave the tenant the legal right to book the common room separately. The additional terms provide that the gym/lounge may be used only by residents of the building but is silent on the right to private bookings..

The landlord has not denied access to this room to tenants as it is available to all tenants during the times provided. I do not accept the submission of the Tenant this decision to prohibit tenants from booking the room for private purposes has breached a legal right given the Tenants and this claim is dismissed.

However, I disagree with the submission of the landlord with regard to the prohibition of the posting of messages. I find the evidence of the landlord as to the reasons for refusing to permit the Tenant to post messages to be petty and unsatisfactory. I determined this amounts to a restriction on the use of the common areas for reasonable and lawful purposes. I accept the submission that the landlord may impose restrictions on what is placed on the bulletin board provided those restrictions are reasonable. However, in my view a complete prohibition preventing the use of the bulletin board by the Tenants for all purposes is unreasonable. I ordered that the landlord permit tenants

to post notices on the bulletin board provided the notices are for reasonable and lawful purposes and not contrary to any reasonable restriction the landlord might impose in its additional terms. .

Application that the landlord comply with the Act, Regulations and Tenancy agreement and the tenant's claim for a monetary order:

Policy Guideline #6 includes the following:

> A. LEGISLATIVE FRAMEWORK
> Under section 28 of the *Residential Tenancy Act* (RTA) and section 22 of the *Manufactured Home Park Tenancy Act* (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:
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> • reasonable privacy;
> • freedom from unreasonable disturbance;
> • exclusive possession, subject to the landlord's right of entry under the Legislation; and
> • use of common areas for reasonable and lawful purposes, free from significant interference.
>
> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
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> 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 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.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

I determined the tenant failed to provide sufficient evidence to prove the landlord or the landlord's agent damaged her head board when she moved in. Further, she failed to provide sufficient evidence as to the value of the damage. As a result this claim is dismissed.

I accept the submission of the Tenant that requirement the Tenant pay 6 months rent in advance was contrary to the tenancy agreement and contrary to the Act. However, the tenant did not dispute the testimony of the landlord that he agreed to it at her suggestion. Further, the overpayment was returned to the Tenant shortly after the tenant made a demand. The tenant failed to prove a financial loss.

The tenant relies on the service of a 10 day Notice to End Tenancy for the failure to pay the rent in full for October. The landlord testified they have no record of the service of a 10 day Notice. Section 26(1) of the Act provides as follows:

> **"Rules about payment and non-payment of rent**
>
> **26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

The tenant acknowledges she deducted the cost of the toilet seat from the rent. The Act does not allow the tenant to do so until she has first obtained an order for an arbitrator to do so. In my view it is irrelevant whether the 10 day Notice was served. The landlord had a legal right to serve the Notice as the Tenant failed to pay the full rent. The service of a 10 day Notice (if it was served) does not give the Tenant the right to claim compensation where the tenant failed to pay the full rent as the landlord had a legal right to do so.. The tenant paid the full rent within a short time after she was told the Notice was served. Such a payment would have voided the Notice even if it had been served.

The Act provides that a landlord may end the tenancy for repeated late payment of rent. The Policy Guideline provides that 3 late payments are sufficient for this ground. Given the landlord stated no 10 day Notice was served I determined that it was in the interest of all parties to make a determination that the landlord did not serve a 10 day Notice to End Tenancy for non-payment of the rent. As a result this cannot be used by the landlord in the future as evidence of a late payment. .

I determined the landlord's refusal to pay the cost of the toilet seat is unreasonable and not supported by the evidence. I accept the testimony of the Tenant that it was damaged prior to her taking possession. I determined the Tenant is entitled to reimbursement of the sum of $24.88.

The tenant seeks compensation on the basis the landlord has knocked on her door or phone her on more than 20 occasions to get the tenant's consent to access the unit to make repairs or for other purposes.

Section 29 of the Act provides as follows:

> **Landlord's right to enter rental unit restricted**
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> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.
>
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I cannot fault the landlord for initially phoning the tenant or knocking on her door to get the tenant's permission to give access to a repair person fix a problem. The Act permits access at any time with the permission of the tenant. The landlord is acting reasonably in such situation. In most cases this would the benefit both parties. However, the tenant has clearly advised the landlord she does not wish this to continue. In my view it the failure of the landlord to respect the tenant's request to be given notice amounts to the breach of the covenant of quiet enjoyment unless it is an emergency situation or some other situation that gives the landlord the right of access under the Act. I

determined the Tenant is damages in the sum of $200 to compensate the tenant for the disruption of her quiet enjoyment.

The tenant seeks compensation alleging breach of the covenant of quiet enjoyment based a “breach letter” dated November 30, 2017 and December 5, 2017.

I accept the submission of the landlord that the landlord has a legal right to serve a breach letter where the situation warrants and it is reasonable and appropriate.

However, in this situation where it is based on a complaint by the resident manager, the landlord failed to prove the breach letter was justified or reasonable. I find the contents of the letter misleading where it alleges the disturbance was caused by the Tenant and 3 guests. If there was a disturbance, the guests referred to were in fact other tenants in the rental property. The resident manager did not attend the hearing and failed to provide evidence to prove the conduct alleged in the letter actually happened. I find the allegations in the letter have not been proven. I determined the use of breach letter based on the evidence of the agent for the landlord is misleading and not justified amounts to harassment. I determined the tenant is entitled to damages of $50 per letter for a total of $100.

I dismissed the tenant’s claim relating to issues relating to parking as the tenant failed to provide sufficient evidence to prove a loss and it appears this is no longer an ongoing problem. I dismissed the tenant’s complaints relating to the use of the landlord’s method to pay the rent as this is moot. The landlord is accepting the rent in the manner paid by the tenant. The tenant failed to prove the failure of the landlord to respond to her e-mails in a timely fashion amount to a breach of the covenant of quiet enjoyment.

Conclusion

I ordered that the landlord permit tenants to post notices on the bulletin board provided the notices are for reasonable and lawful purposes and not contrary to any reasonable restriction the landlord might impose in its additional terms. I dismissed the tenant’s claim that she be given the right to book the lounge and amenities room for private purposes.

I ordered the landlord(s) to pay to the tenant the sum of $324.88 plus $100 for the cost of the filing fee for a total of $424.88.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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 28, 2018

Residential Tenancy Branch