



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC EDGE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed September 1, 2017, wherein the Tenant sought monetary compensation in the amount of \$9,000.00 from the Landlord as well as recovery of the filing fee.

The hearing was conducted by teleconference on March 26, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

At the outset of the hearing the Landlord confirmed that the Tenant did not serve the hearing package until February 28, 2018, nearly six months after filing for Dispute Resolution. The Tenant initially stated that all of her items were in storage; she later stated she believed she had two weeks prior to the hearing to serve her materials.

The Landlord filed their response materials on March 20, 2018. While this is outside of the time required by the *Rules of Procedure*, I accept this evidence as I find the Landlord's late delivery to be a result of the Tenant failing to serve her application in a timely fashion and in accordance with the *Rules*.

The parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that her tenancy began April 1, 2017. Monthly rent was payable in the amount of \$1,000.00. The Tenant paid a security deposit in the amount of \$500.00.

In the within action the Tenant sought \$9,000.00 for the following:

Return of rent for April 2017	\$1,000.00
Return of rent for May 2017	\$1,000.00
Return of rent for June 2017	\$1,000.00
Return of rent for July 1-15, 2017	\$500.00
Compensation for being homeless from July 15, 2017 to August 15, 2017	\$1,000.00
Compensation for being homeless from August 15, 2017 to September 15, 2017	\$1,000.00
Return of damage deposit	\$500.00
Compensation for time seeking alternate accommodation, travel costs, stress, defamation of character, slander	\$3,000.00
TOTAL CLAIMED	\$9,000.00

The Tenant was informed during the hearing that her \$2,000.00 claim related to being homeless, as well as her \$3,000.00 claim for her time seeking other accommodation, travel costs, stress, defamation of character and slander are not recoverable under the *Residential Tenancy Act*. Consequently, the only valid claims before me were the Tenant's claims for return of rent paid from April 1, 2017 to July 15, 2017 in the amount of \$3,500.00, her \$500.00 claim for return of her security deposit and her claim for recovery of the \$100.00 filing fee.

The circumstances giving rise to the Tenant's Application are as follows. The Tenant stated that the rental unit below her had regular parties such that her right to quiet

enjoyment was negatively impacted. She stated that the rental building was no smoking, yet the noise and the constant marijuana smell from the neighbouring units was unbearable and caused her to move out before the expiration of her fixed term tenancy.

The Tenant testified that she told the Landlord about her concerns in the first or second week of April 2017. She stated that she informed the Landlord via text to the Landlord's representative at the time, C.S. She provided copies of the text messages in evidence.

The Tenant stated that the rental unit was very nice, and it was her "dream place" and she was very happy to be living there. She stated that she didn't know any of her neighbours and did not know they would be partying and smoking marijuana all the time. She stated that she doesn't drink, smoke or do drugs and the marijuana smoke was particularly bothersome.

She stated that she called the strata and the RCMP about her concerns.

She stated that on one occasion she called K.S. and begged her to come to the rental unit to see how bad it was. She said when K.S. came to the rental unit she could smell the marijuana as soon as she came into the building.

The Tenant claimed that she could even smell it through the walls, especially her bedroom. She even tried to move her bed into the living room so she could get some peaceful rest. Unfortunately when she moved into the living room the downstairs neighbours started partying and slamming doors. She stated that she works as an outreach worker and in health care as a personal care aide and worked both week days and weekends and the lack of sleep was unmanageable.

The Tenant sent numerous written letters to the Landlord, April, May, June and July. Copies of those letters were provided in evidence. In the letter dated June 27, 2017 the Tenant writes that the Landlord's representative, K.S. invited her to view other rental units as means to resolve the issue.

The Tenant stated that she could not enjoy her rental unit at all. She confirmed that she was allowed to break her lease as K.S. understood that the Tenant could no longer stay in the rental unit.

K.S. also provided the Tenant with a letter of reference which was provided in evidence.

The Tenant further stated that despite the positive reference letter, when she applied for another rental unit, the prospective Landlord stated that K.S. told him that she had unauthorized family members in the rental unit. The Tenant felt that K.S. had defamed her in this regard.

In response to the Tenant's claims the Landlord's representative K.M.S. testified as follows.

K.M.S. stated that the Landlord attempted to accommodate the Tenant and to respond to her requests. They looked at moving her to another unit within the building and sent caution letters to the other tenants. She confirmed that K.S. sent caution notices to the surrounding tenants on: April 13; April 19; and, May 15, 2017.

K.M.S. confirmed that it is the Landlord's position that they attempted to deal with the Tenant's concerns as best as they could, in a timely fashion and within their rights under the *Act*. She noted that the Tenant was able to break her lease without consequence. She confirmed that the Landlord is not willing to compensate her at all.

K.M.S. stated that to her knowledge K.S. did not give negative feedback to prospective Landlords as claimed by the Tenant.

Analysis

The Tenant seeks return of all rent paid during her tenancy alleging that her right to quiet enjoyment was breached by the Landlord.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of the behaviour of other tenants in the rental building; specifically their marijuana smoking and late night partying.

The Landlord submits that they responded to the Tenant's complaints in a timely manner and took all steps permitted under the *Residential Tenancy Act* to address her concerns, offered to relocate her within the rental building and allowed her to break her fixed term tenancy.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

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;
- (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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“...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 form a basis for a claim of a breach of the covenant of quiet enjoyment.

...Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to

which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

After careful consideration of the evidence, the testimony of the parties, and on a balance of probabilities, I find the Tenant has failed to prove the Landlord breached section 28.

While I accept that the Tenant communicated her concerns to the Landlord, I find the Landlord took reasonable steps to address the situation.

The Landlord must balance the interests of all tenants and must, when dealing with problem tenants or behaviour, act in accordance with the *Residential Tenancy Act*. I find, based on the evidence before me that the Landlord acted within their rights and responsibilities under the *Act*. The Landlord responded to the Tenant's concerns and issued warnings to the other tenants regarding their behaviour. Even had the Landlord issued 1 Month Notices to End Tenancy for Cause to those tenants, the situation would not have been resolved "overnight".

I also find that the Landlord took reasonable steps to accommodate the Tenant by attempting to find her another rental unit, as well as allowing her to end her tenancy early without financial consequence.

While I accept the rental unit was not satisfactory to the Tenant and that she was negatively impacted by the behaviour of the other tenants, I am unable to find the Landlord breached their obligations under the *Act*. I therefore find the Tenant has failed to prove her claim for compensation for breach of quiet enjoyment.

The Tenant sought return of her security deposit in the amount of \$500.00. The Landlord did not dispute this claim. I therefore grant her request for return of these funds.

Having been substantially unsuccessful in her claim, I dismiss the Tenant's claim for recovery of the filing fee.

Conclusion

The Tenant's claim for return of all her rent and recovery of the filing fee is dismissed.

The Tenant is entitled to return of her \$500.00 security deposit and is granted a Monetary Order in this amount. The Tenant must serve the Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: April 20, 2018

Residential Tenancy Branch