Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction:

A hearing was convened on January 16, 2018 in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on July 27, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

On December 14, 2017 the Tenants submitted 27 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via courier, on December 16, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 03, 2018 the Tenants submitted 2 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via courier, on December 27, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 29, 2017 the Landlord submitted 32 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants at the rental unit, via registered mail, on December 27, 2017. The Landlord and the Tenants agree that this address was provided as a service address for these proceedings. The male Tenant stated that the Tenants made arrangements with

Canada Post to have their mail forwarded from this address to their address in the United States.

The Landlord stated that the registered mail was returned to him by Canada Post. He stated that he was informed by Canada Post that they could not forward registered mail to the United States.

On January 11, 2018 the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenants, as he believed it would not be delivered if he sent it registered mail.

As outlined in my interim decision of January 16, 2018, the hearing was adjourned to provide the Landlord with the opportunity to serve his evidence to the Tenants. At the hearing on April 03, 2018 the Tenants acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

The hearing was reconvened on April 03, 2018 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Preliminary Matter

When the Tenants filed this Application for Dispute Resolution they applied for a monetary Order of $8,000.00. On July 24, 2017 the Tenants submitted a Monetary Order Worksheet in which they outlined their claim for $8,000.00. I find that the Tenants' claims are limited to the amount claimed on the Application for Dispute Resolution, pursuant to rule 2.2 of the Residential Tenancy Branch Rules of Procedure.

In the Tenants' evidence package that was submitted to the Residential Tenancy Branch on December 14, 2017 the Tenants submitted a document titled "Updated Moving Expenses". In this document the Tenants have listed a variety of expenses related to their moving costs. They also appear to have increased the amount of their claim for "stress and aggravation" and added a claim for time and expense of gardening.

At the hearing the Tenants applied to increase their claim from $8,000.00 to $28, 674.41, which is the total amount of their “Updated Moving Expenses”.

I declined the request to amend the Application for Dispute Resolution, as the Tenants did not amend the Application for Dispute Resolution in accordance with 4.1 of the Residential Tenancy Branch Rules of Procedure. Rule 4.1 of the Residential Tenancy Branch stipulates that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and submitting the Amendment to an Application for Dispute Resolution with supporting evidence to the Residential Tenancy Branch.

In my view, placing a list that is titled “Updated Moving Expenses” within a 77 page evidence package is not sufficient notice that the Tenants intended to increase their claim to $28,674.41. The Landlord is entitled to be clearly informed of the Tenants’ intent to increase their claim, by being served with an Amendment to an Application for Dispute Resolution.

Issue(s) to be Decided:

Are the Tenants entitled to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence:

The Landlord and the Tenants agree that this tenancy began on May 15, 2015 and that it ended on September 30, 2017.

The Landlord and the Tenants agree that when this tenancy ended the Tenants were paying rent of $1,000.00 per month.

The Tenants are seeking compensation for “stress and aggravation”, in the amount of $4,600.00. I consider this to be a claim for loss of quiet enjoyment of the rental unit.

The Tenants contend that the Landlord should have informed them that the person living in the basement suite had “psychiatric issues” and “was difficult to deal with”. The male Tenant stated that had this information been disclosed to the Tenants they would not have moved into the rental unit and would not, therefore, have been disturbed by her and would not have incurred costs of moving out of the rental unit.

The Landlord stated that he would describe the occupant of the lower rental unit to be "quirky" but he does not consider her mentally ill. He stated that he did not have any issues with the occupant prior to the start of the Tenants' tenancy.

The Landlord stated that the occupant of the lower unit moved into the residential complex approximately two years prior to the Tenants moving into it and that the former occupants of the rental unit did not report any problems with the occupant of the lower unit.

The Landlord stated that the occupant of the lower unit was living in the residential complex when it was sold in January of 2018 and that the new occupants of the rental unit did not report any problems with the occupant of the lower unit.

The male Tenant stated that he contacted the person who lived in the rental unit prior to the start of the Tenants' tenancy and that person informed the Tenant that he had problems with the occupant of the lower unit and that he moved from the unit because of that occupant. He stated that this person was not willing to provide evidence for these proceedings.

The Tenant submitted a letter, dated May 07, 2017, in which the daughter of the occupant of the lower rental unit declared that her mother has "extreme anxiety including social anxiety and depression" and that the Landlord has been aware of "her medical condition" "from the beginning" of her tenancy.

The Landlord and the Tenants agree that the relationship between the Tenants and the occupant of the lower rental unit was acrimonious.

The male Tenant stated that they experienced many problems with the occupant of the lower rental unit, including throwing garbage in the Tenants' gardening area, taking plants from the Tenants' garden area; damaging things he built in the garden, allowing her grandchildren to run through the Tenants' garden area, and speaking to the Tenants in a very disrespectful manner. The Tenants submitted a copy of the female Tenant's journal, in which the female Tenant has recorded some of her concerns with the tenancy and the sharing of the garden.

The male Tenant stated that on July 11, 2017 the occupant of the lower rental unit began yelling at the Tenants about property being stored in the yard and demanding that it be moved. He stated that she wanted him to move property that had been stored outside under a plastic tarp for approximately two years. He stated that he sent a text to

the Landlord and advised him that the occupant was threatening to damage the Tenants' personal property and the Landlord replied that he was too busy to respond to the issue and that he would address the issue when he had time.

The male Tenant stated that sometime after he sent the aforementioned text to the Landlord the occupant of the lower rental unit began removing the Tenants' property from beneath the tarp and throwing it into the yard. He stated that the occupant refused to stop so he sprayed her with a garden hose in an attempt to stop her from damaging his property. He stated that the occupant's daughter then assaulted the female Tenant by pulling her hair and hitting her. He stated that he attempted to intervene and he was also assaulted by the occupant and her daughter. He stated that the police attended but no charges were laid because the Landlord told the police both parties were 50% responsible.

In the female Tenant's journal she wrote that she pushed the occupant's daughter prior to being assaulted by that individual.

The Landlord stated that when he first received a text from the Tenants on July 11, 2017 the physical altercation had not occurred. He stated that he was attending an important family event and he told the Tenants that he would to the occupant of the lower rental unit at a later time. He stated that he attended the rental unit later that day, while the police were still on site.

The Landlord stated that on July 19, 2017 the police contacted him to ask him his opinion of the incident on July 11, 2017. He told the police that he was told that the assault was precipitated by the male Tenant spraying a garden hose and that both parties were probably 50% to blame.

The Landlord and the Tenants agree that on July 30, 2017 the Landlord served the Tenants with a letter, a copy of which was submitted in evidence. In this letter the Landlord, in part, informed the Tenants not to initiate any physical contact with the occupant of the lower rental unit.

The Landlord stated that a similar letter was given to the occupant of the lower rental unit however in that letter the occupant was also directed not to touch the Tenants' property or to encroach on their "personal areas".

The male Tenant stated that they reported their concerns to the Landlord on numerous occasions. He stated that in his opinion the Landlord was attempting to avoid his

responsibility to resolve the conflict and the Landlord was clearly refusing to “take sides”.

The Landlord stated that he frequently received complaints from both parties regarding the conduct of the other party. He stated that he frequently spoke to each party regarding those complaints; he encouraged the parties to try and resolve their conflict; and he facilitated two meetings which were attended by the Tenants and the occupant of the lower rental unit. He stated that he was able to resolve a parking complaint by enlarging the parking area but he was often unsuccessful in addressing the concerns of either party.

The Landlord stated that in spite of his efforts he was often unable to resolve the conflict between the parties and he eventually concluded that he would not be able to resolve the conflict.

The Tenants submitted documentation in which they inform the Landlord of various issues with the occupant of the lower rental unit.

The Landlord submitted letters from the occupant of the lower rental unit in which she informs the Landlord of various issues with the Tenants.

The Tenants are seeking compensation, in the amount of $560.00, for being unable to use entire yard for gardening, as they contend was promised at the start of the tenancy. They are also claiming compensation because the actions of the occupant of the lower rental unit prevented them from using and enjoying the garden.

The Tenants contend that when they viewed the rental unit they were told the entire yard was for their personal use and they were specifically told that it was not for the use of the occupant of the lower rental unit. They contend that they were told the occupant of the lower rental unit had arthritis and was unable to garden. They further contend that the Landlord gave them permission to create a large garden in an area that had been previously covered with grass.

In the female Tenant’s journal she wrote that the day the tenancy agreement was signed they were told that they should speak with the occupant of the lower rental unit to determine which areas the lower occupant was using and that the remaining areas could be used by the Tenants. In the written submission dated July 20, 2017 the Tenants contend that shortly after they moved in the Landlord told them to speak with the occupant of the lower rental unit to fairly divide the garden areas.

The Landlord stated that he never informed the Tenants that the entire yard was for their own use. He stated that he agreed that could create a large garden in an area that had been previously covered with grass and that he left it to the parties to fairly divide the rest of the gardens. He stated that he never informed the Tenants that the occupant of the lower rental unit was physically unable to garden.

The parties agree that in March of 2016 the Landlord again asked the parties to fairly divide the garden areas but he did not participate in that process. The Tenants were not satisfied with the division of garden areas, as the occupant of the lower rental unit reportedly claimed ownership of a large portion of the yard, leaving the Tenants with only a portion of the back yard and the garden the Tenants had created in the grassy area. The Tenants contend that much of the conflict between the parties could have been avoided if the Landlord had simply allotted the garden areas to the various parties.

The Landlord stated that he never fully understood the Tenants' concerns regarding the garden as there was plenty of space for both parties to garden.

The Tenants are seeking compensation, in the amount of $2,000.00, for moving costs. The Tenants contend that they had to move from the rental unit because of the actions of the occupant of the lower rental unit and the Landlord's failure to resolve that conflict.

The Tenants are seeking compensation for costs associated to participating in these proceedings, in the amount of $840.00.

Analysis:

On the basis of the letter, dated May 07, 2017, which was apparently written by the daughter of the occupant of the lower rental unit, I find that the occupant experiences "extreme anxiety including social anxiety and depression".

On the basis of the testimony of the Landlord, I find that he considered the occupant of the lower rental unit to be "quirky", but he did not consider her to be "mentally ill".

I find that the letter of May 07, 2017 does not serve to establish that the Landlord was aware that the occupant of the lower rental unit had "extreme anxiety including social anxiety and depression" prior to receiving this letter. I find it entirely possible that the daughter of the occupant of the lower rental unit was simply declaring that the Landlord was aware that the occupant exhibited unusual behaviour when she declared that the

Landlord has been aware of “her medical condition” “from the beginning” of her tenancy. I find this to be consistent with the Landlord’s testimony that he considered her to be “quirky”. On the basis of this letter I find there is insufficient evidence to conclude that the Landlord was aware the lower occupant had been a medical diagnosis.

Even if the Landlord was aware that the occupant of the lower rental unit had “extreme anxiety including social anxiety and depression”, I cannot conclude that the Landlord had an obligation to disclose that information to the Tenants prior to entering into a tenancy agreement with them. Rather, I find that it would have been improper for the Landlord to share that sort of personal information with the Tenants at any time.

I find that the Landlord did have an obligation to inform the Tenants of any significant issues with the rental unit prior to entering into a tenancy agreement with them, which would include any significant issues with other people living in the rental unit.

I find that the Tenants have submitted insufficient evidence to establish that the occupant of the lower rental unit was creating problems in the residential complex prior to the beginning of the Tenants’ tenancy. In reaching this conclusion I was heavily influenced by the testimony of the Landlord, who stated that the former occupants of the rental unit did not report any problems with the occupant of the lower unit and he did not have any issues with the occupant prior to the start of the Tenants’ tenancy. As the Landlord did not have any concerns with the occupant of the lower rental unit prior to the beginning of the Tenants’ tenancy, I find that he had no relevant information to disclose to the Tenants.

In adjudicating this matter I have placed no weight on the Tenants’ submission that the person who lived in the rental unit prior to the start of the Tenants’ tenancy told the male Tenant that he had problems with the occupant of the lower unit and that he moved from the unit because of that occupant. Even if this information is accurate, it does not establish that the former tenant conveyed those concerns to the Landlord. I therefore find that it does not establish that the Landlord was aware there were problems with the occupant of the lower rental unit prior to the beginning of the Tenants’ tenancy.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the evidence clearly establishes that the relationship between the Tenants and the occupant of the lower rental unit was acrimonious and that both parties were reporting the acrimony to the Landlord.

Given that both parties were reporting problems to the Landlord and the Landlord did not witness the alleged incidents, I find that it would have been difficult, if not impossible, for the Landlord to conclude that one party was solely responsible for the acrimony.

In determining that it would have been difficult for the Landlord to conclude that the occupant of the lower unit was solely responsible for this conflict between the parties I was influenced, in part, by the Landlord's testimony that he received no complaints about the lower occupant prior to the start of this tenancy or after the end of this tenancy.

Given that the Tenants initiated a physical altercation on July 11, 2017 by first spraying the occupant of the lower rental unit with a garden hose and then placing a hand on her daughter's forehead and pushing her back, I find that it would be unreasonable for the Landlord to conclude that the Tenants did not contribute to the acrimony.

Even if the Tenants' actions on July 11, 2017 were a response to the occupant of the lower rental unit damaging their property, I find that the response was not appropriate. Given that the property the occupant was allegedly damaging had been stored outside under a tarp for approximately two years, I find it highly unlikely that the property was highly valuable. Even if the property was valuable, a more appropriate response would have been to contact the police.

Section 28 of the *Residential Tenancy Act (Act*) grants tenants the right to the quiet enjoyment of their rental property, including, but not limited to the rights to 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.

Residential Tenancy Branch Policy Guideline #6 reads, in part:

> 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.
>
> (Emphasis added)

The test here is whether the Landlord took reasonable steps to address the acrimony between the parties and in these circumstances I find that he did.

In circumstances where it is clear that one party is interfering with another occupant's peaceful enjoyment of the property and is not responding to directions to correct inappropriate behaviour, a landlord has the ability to remedy the situation by ending the tenancy of the offending party.

In the absence of clear evidence that one party is responsible for an acrimonious relationship, as is the case in these circumstances, I find that the landlord acted reasonably when he tried to facilitate a respectful relationship. On the basis of the undisputed evidence I find that he spoke with both parties individually on several occasions and on two occasions he met jointly with the Tenants and the occupant of the lower rental unit in an attempt to resolve the acrimony.

A landlord cannot be expected to have the skills to resolve all interpersonal conflict between tenants. In these circumstances I find that the Landlord made reasonable efforts to resolve the conflict between the parties, although he was clearly unable to do so.

In circumstances where it appears that both parties are contributing to an acrimonious relationship, it may be reasonable for the landlord to end the tenancy of both parties. In my view it would have been reasonable for the Landlord to serve both parties with a One Month Notice to End Tenancy for Cause after the incident on July 11, 2017, as the behaviour of both parties was highly inappropriate.

In these circumstances the Landlord opted to serve each party with a written warning, dated July 30, 2017, in which the parties were directed not to have any contact with the other party. I find this to be an equally reasonable response, as it would strengthen the grounds to end a tenancy if the Landlord could establish that the parties were continuing to engage in an inappropriate manner.

I find that the Landlord acted appropriately when he told the police that he believed that both parties were each probably 50% to blame for the incident on July 11, 2017. The police asked him for an opinion and he provided an opinion that is likely the same opinion I would have provided in those same circumstances.

In concluding that the Landlord responded reasonably to the acrimony between the parties, I have placed no weight on the undisputed evidence that the Landlord did not immediately intervene when he was informed that the occupant of the lower rental unit was threatening to move the Tenants' property on July 11, 2017.

I find that the Landlord's response that he would address the issue when he had time to be reasonable, considering he was attending a family event that was important to him. Although a landlord has a duty to respond to emergencies related to the residential property, a landlord does not have a duty to respond to criminal matters, such as theft or assault. Criminal matters should be reported to the police.

In concluding that the Landlord acted reasonably to resolve the conflict between the parties, I find that the Landlord acted proactively on several occasions. On the basis of the undisputed evidence I find that he enlarged the parking area to resolve parking complaints. On the basis of the female Tenant's journal I find that he also removed a couch that the Tenants wanted removed from the residential property; he removed a pile of garden waste that the Tenants allege were left on the property by the occupant of the lower rental unit; he cleared snow from the Tenants' deck to ensure the removal did not disturb the lower occupant; and he established a watering schedule, albeit one the Tenants' did not consider fair.

On the basis of the undisputed evidence I find that the interactions with the occupant of the lower rental unit disturbed the Tenants' quiet enjoyment of the residential property. I find it is not necessary for me to determine whether or not the Tenants also disturbed the occupant's quiet enjoyment of the residential property.

As I have found that the Landlord made <u>reasonable</u> efforts to resolve the conflict between the two parties, I find that he is not obligated to compensate the Tenants for

the actions of the occupant of the lower rental unit. I therefore dismiss the Tenants' application for compensation related to the conflict between those parties.

I find that the Tenants have submitted insufficient evidence to establish that prior to the start of this tenancy they were told that they would have exclusive use of the yard/gardens. In reaching this conclusion I was heavily influenced by the absence of independent evidence that corroborates the Tenants' submission that they were told they had exclusive use of the yard prior to signing the tenancy agreement or that refutes the Landlord's submission they were not told they had exclusive use of the yard/gardens.

On the basis of the female Tenant's journal, I am satisfied that she understood she would have exclusive use of the yard. I am not satisfied, however, that this is the information that was provided to her by the Landlord.

On the basis of the Tenants' submission that shortly after the tenancy began the Landlord told them that they should communicate with the occupant of the lower rental unit to fairly divide the gardens. I find it unlikely the Landlord would have provided this direction to the Tenants if he had previously told them they had exclusive use of the garden. I find it more likely that the Tenants misunderstood the information provided to them regarding the use of the yard.

As the Tenants have failed to establish the tenancy included exclusive use of the yard, I find they are not entitled to any compensation for not having full use of all of the gardens.

On the basis of the undisputed evidence I find that the Landlord permitted the Tenants to create a large garden plot in an area that had been previously covered by grass; that that the Landlord left it to the parties to fairly divide the rest of the garden areas; and that the Tenants were not satisfied with the division of garden areas, as the occupant of the lower rental unit allegedly claimed ownership of a large amount of the yard.

I find the Tenants' submission that much of the conflict between the parties could have been avoided if the Landlord had allotted the garden areas to the various parties is mere conjecture. I find it entirely possible that the Tenants would not have been satisfied with a solution imposed by the Landlord, as the Tenants clearly believed that they were entitled to full use of the gardens.

Given the level of animosity between the parties and the ongoing dispute over the

garden, however, I find that it would have been reasonable for the Landlord to allocate garden areas to each party. I find that he had the authority to do so and that he should not have left this responsibility to the parties, given the level of animosity between them.

I find that the Landlord's failure to allocate garden areas to each party did interfere with the Tenants ability to use the garden without significant interference, which breached their right to the quiet enjoyment of the rental unit. I find that the Tenants' claim of $560.00 for being unable to use the garden without significant interference is reasonable and I grant compensation in this amount.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant experiences a loss as a result of their landlord failing to comply with the *Act* or the tenancy agreement.

Although I have concluded that the Landlord breached the Tenants' right to the quiet enjoyment of the rental unit by not allocating garden areas to the parties, I find that the Tenants did not need to move from the rental unit as a result of that breach. Had that been the only issue with the tenancy, the Tenants had the option of filing an Application for Dispute Resolution seeking an Order requiring the Landlord to allocated garden space to each party. As the Tenants did not need to vacate the rental unit as a result of this breach, I find they are not entitled to moving costs as a result of this breach.

I accept the Tenants submission that they vacated the rental unit as a result of the animosity between them and the occupant of the lower rental unit. As I have concluded that the Landlord acted reasonably in his efforts to resolve that conflict, I cannot conclude that he breached the *Act* or the tenancy agreement in that regard. As the moving expenses incurred by the Tenants are not directly related to the Landlord breaching the *Act* or the tenancy agreement, I dismiss their claim for moving costs.

I find that the Tenants' Application for Dispute Resolution has some merit and that the Tenants are entitled to recover the fee paid to file this Application.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenants' for compensation for costs associated to participating in these proceedings.

Conclusion:

The Tenants have established a monetary claim of $660.00, which includes $560.00 in compensation for not being able to use the garden without significant interference and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 06, 2018

Residential Tenancy Branch