Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APARTMENTSRUS PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC FFT OLC MNDL-S, FFL

Introduction

A hearing was convened on May 02, 2018 in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail, although she cannot recall the date of service. The Tenants acknowledged receipt of these documents.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a Notice to End Tenancy, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement; and to recover the fee for filing an Application for Dispute Resolution. At the hearing on May 02, 2018 the Tenants withdrew their application to cancel a Notice to End Tenancy, as the rental unit has been vacated.

The male Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were delivered to the Landlord's business office, although he cannot recall the date of service. The Agent for the Landlord acknowledged receipt of these documents.

On April 12, 2018 the Tenants submitted an Amendment to an Application for Dispute Resolution in which the Tenants applied for financial compensation. The male Tenant stated that the Amendment to an Application for Dispute Resolution and 36 pages of evidence were served to the Landlord, via registered mail, on April 12, 2018. The Agent for the Landlord

acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On April 09, 2018 the Landlord submitted 15 pages of evidence and a video to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on April 12, 2018. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 17, 2018 the Landlord submitted 30 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on April 17, 2018. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 20, 2018 the Tenants submitted 4 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was delivered to the Landlord's business address with the Application for Dispute Resolution. The Agent for the Landlord denied receiving this evidence.

The hearing on May 02, 2018 was adjourned to provide the Tenants with the opportunity to re-serve the aforementioned 4 pages of evidence to the Landlord. The hearing was reconvened on June 28, 2018 and was concluded on that date.

At the reconvened hearing the male Tenant stated that the aforementioned 4 pages of evidence were sent to the Landlord, via registered mail, on May 14, 2018. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

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.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?
Are the Tenants entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on March 15, 2017;
- the tenancy ended on March 31, 2018;
- the Tenants agreed to pay monthly rent of $1,495.00 by the first day of each month;
- the Tenants paid a security deposit of $747.50;

- the Tenants paid a pet damage deposit of $747.50;
- the Landlord returned $1,195.00 of the security/pest damage deposits on, or before, April 11, 2017; and
- the Tenants provided a forwarding address, via email, on March 31, 2018.

The Landlord stated that the rental unit was jointly inspected in early March of 2017; that she completed the condition inspection report on that date; that she left the condition inspection report with the Tenants for the purposes of having them sign and return it to her; that the Tenants added some entries to the condition inspection report; and that the signed report was returned to her on March 10, 2017.

The male Tenant stated that the rental unit was not jointly inspected in early March of 2017; that the Landlord left them with a partially completed condition inspection report in early March of 2017; that the Tenants added some entries to the condition inspection report; and that Tenants signed the report and returned it to the Landlord on March 11, 2017.

The Landlord stated that she met with the Tenants on March 31, 2018 for the purposes of completing the condition inspection report at the end of the tenancy. She stated that she told the Tenants the unit was in good condition with the exception of a hole in the door. She stated that she presented the Tenants with the condition inspection report; recorded that there should be a $200.00 deduction for a damaged door; and asked the Tenants to sign the report to indicate they agreed to deduct $200.00 from their security deposit in compensation for the damaged door. She stated that the Tenants refused to sign the report so she left without a signed report.

The male Tenant stated that the Tenants met with the Landlord on March 31, 2018 for the purposes of inspecting the rental unit at the end of the tenancy. He stated that the Landlord asked the Tenants to sign the condition inspection report that did not record the condition of the rental unit at the end of the tenancy and did not have a reference to a $200.00 deduction from their security deposit. He stated that the Tenants refused to sign the report because it was blank.

The Landlord is seeking compensation, in the amount of $200.00, for replacing a bedroom door.

The Agent for the Landlord stated that the bedroom door was not damaged at the start of the tenancy. She stated that at the end of the tenancy the Tenants had repaired a hole in the hollow bedroom door. She stated that she believes the repair to the door is inadequate, because the repair is not cosmetically pleasing and over time the movement of the door will cause the patch to fall out of the door. She stated that the door was replaced, at a cost of $210.00.

The Landlord submitted photographs of the hole in the door, which appears to be approximately 1” X 1” in size. One of the photographs depicts the repair at the time of the final inspection

before the Agent for the Landlord had poked at the repair while it was still wet and one of the photographs depicts the repair the following day.

The male Tenant stated that the hole in the door was present when this tenancy began. He stated that he noted it on the condition inspection report that was completed in March of 2017, although he inadvertently noted that the damage was to the "walls and trim" of the bedroom rather than to the "door" of the bedroom. He stated that he repaired this hole at the end of the tenancy even though the damage did not occur during the tenancy.

The Tenants submitted a letter from a personal friend, who declared that he viewed the repair to the door and concluded that it was well done. The male Tenant stated that he believes the repair was done properly and was barely noticeable.

The Agent for the Landlord stated that the Landlord did not submit a copy of the receipt for repairing the door.

The Tenants are seeking compensation for loss of the quiet enjoyment of the rental unit, in part, because they were frequently disturbed by sounds emanating from the upper suite. The male Tenant stated that they made a noise complaint to the Landlord on January 07, 2018 and it is his understanding that the Landlord spoke with the occupants of the upper suite regarding the noise complaint.

The Agent for the Landlord stated that the Tenants made a noise complaint on January 07, 2018; that she sent an email to the occupants of the upper suite regarding that complaint; and the occupants indicated they would modify their behaviour.

The male Tenant stated that the occupants of the upper suite became even louder after January 07, 2018. He stated that he verbally reported these additional disturbances to the Landlord on at least three occasions. He stated that the Agent for the Landlord told him that he had to accept some noise and he does not believe she responded to any of the subsequent noise complaints. The Tenants were unable to submit independent documentary evidence to corroborate that they made noise complaints after January 07, 2018.

The Agent for the Landlord stated that she never received additional noise complaints regarding the upper suite after January 07, 2018 until she received the Tenants' Application for Dispute Resolution.

The Landlord and the Tenants agree that there is a clause in their tenancy agreement that requires tenants to make all complaints in writing.

The Tenants are seeking compensation for loss of the quiet enjoyment of the rental unit, in part, because they were frequently disturbed by sounds emanating from the Agent for the Landlord's

son's bedroom. The male Tenant stated that he verbally reported this noise disturbance to the Agent for the Landlord on at least three occasions.

The male Tenant stated that they could hear people talking, coughing, and laughing in the son's bedroom, which he believes is because the walls between the rental unit and the son's bedroom were not properly insulated. He contends that the Landlord should add insulation to the walls.

The Agent for the Landlord stated that the Tenants verbally reported noise emanating from her son's bedroom on February 13, 2018. She stated that the Tenants never reported this concern again until she was served with the Tenant's Application for Dispute Resolution.

The Agent for the Landlord stated that she did not respond to this complaint as she did not believe that the Tenants could have been significantly disturbed by noises emanating from her son's bedroom, as there are kitchen cabinets on the wall that separates this room from the rental unit.

The Tenants are seeking compensation for loss of the quiet enjoyment of the rental unit, in part, because they were frequently disturbed by sounds emanating from the lobby and hallways of the residential complex. The male Tenant stated that he verbally reported this noise disturbance to the Agent for the Landlord on several occasions.

The Tenants contend that the Landlord should add insulation to the walls and install soundproof doors.

The Agent for the Landlord stated that the Tenants never reported a concern about noise emanating from the lobby and hallways until she received the Tenants' Application for Dispute Resolution. She stated that in the five years she has worked at this residential complex she has never received a similar complaint and she doubts that conversations in the lobby could be heard in the rental unit.

The Tenants are seeking compensation for loss of the quiet enjoyment of the rental unit, in part, because bags of leaves were left outside of their kitchen window sometime in October of 2017 and they were not removed until February or March of 2018. The male Tenant stated that they reported concerns about the leaves, verbally, sometime in March of 2018 and the leaves were removed approximately one month later.

The Agent for the Landlord stated that she did not receive a complaint about the leaves until the Landlord was served with the Tenants' Application for Dispute Resolution. She stated that the bags of leaves were removed the day after the Application for Dispute Resolution was received.

The Tenants are seeking compensation for loss of the quiet enjoyment of the rental unit, in part, because of a pest infestation. The male Tenant stated that he verbally reported an infestation of

carpenter ants, although he cannot recall the date of the first report. He stated that on August 30, 2017 he again reported the infestation.

The Agent for the Landlord stated that when she first received notice of a pest infestation she contacted a pest control company and was advised that the pest was likely termites, which will die within a day and that the infestation is an annual event that only lasts a few days. She stated that she did not hear from the Tenants again in regards to the infestation so she assumed the problem has been rectified.

The male Tenant stated that the he verbally informed the Landlord of a continuing infestation a few days after he reported it by email. He stated that there were a total of three infestations over a period of 1.5 to 2 weeks.

At the conclusion each party was provided with the opportunity to provide additional testimony and neither party did so.

Analysis

Section 23(1) of the *Residential Tenancy Act (Act*) stipulates that a landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. I find that there is insufficient evidence to determine if the rental unit was jointly inspected in early March of 2017. In reaching this conclusion I was heavily influenced by the lack of independent evidence that corroborates the Agent for the Landlord's testimony that the unit was jointly inspected or that corroborates the Tenants' submission that the unit was not jointly inspected.

Section 23(4) of the *Act* stipulates that a landlord must complete a condition inspection report in accordance with the regulations. On the basis of the undisputed evidence I find that the Landlord made some entries on the condition inspection report before it was left with the Tenants. I therefore find that the Landlord complied with section 23(4) of the *Act*, although I accept that it was not completed to the satisfaction of the Tenants.

Section 23(5) of the *Act* stipulates that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. On the basis of the undisputed evidence I find that both parties complied with section 23(5) of the *Act*, as the Landlord signed the report and the Tenants received a copy of it.

As I have concluded that the Landlord complied with section 23(5) of the *Act;* there is insufficient evidence to conclude that the rental unit was not jointly inspected at the start of the tenancy; and there is insufficient evidence to conclude that the Landlord was required to comply with section 23(4) of the *Act*, I cannot conclude that the Landlord is subject to the penalties imposed by section 24(2) of the *Act*.

As I have concluded that there is insufficient evidence to conclude that the rental unit was not jointly inspected when this tenancy began, I cannot conclude that the Tenants are subject to the penalties imposed by section 24(1) of the *Act*.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit. On the basis of the undisputed evidence I find that the Landlord and the Tenants met on March 31, 2018 for the purposes of inspecting the rental unit.

Section 35(1) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations. Although the condition inspection report submitted in evidence has very little information on the "move out" portion of the report, I find that the notation that there was a hole in the door is sufficient to conclude that the report was "completed" at some point. In my view the limited information serves as notice that there was no damage to the unit with the exception of the door.

I find that there is insufficient evidence to conclude that the information on the report was not added to the report on March 31, 2018. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the entry was made at the time of the inspection or that refutes the male Tenant's testimony that the entry was not on the report when there were asked to sign the report.

Section 35(4) of the *Act* stipulates that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. As neither party has signed the final condition inspection report, I find that neither party complied with section 35(4) of the *Act.*

As I have concluded that the Landlord complied with section 35(1) of the *Act;* both parties failed to comply with section 35(4) of the *Act*; there is insufficient evidence to conclude that the Landlord was required to comply with section 35(2) of the Act; and the Tenants were provided with a copy of the final condition inspection report, I cannot conclude that the Landlord is subject to the penalties imposed by section 36(2) of the *Act*.

As I have concluded that the Tenants complied with section 35(1) of the *Act,* I cannot conclude that the Tenants are subject to the penalties imposed by section 36(1) of the *Act*.

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 favour the testimony of the Agent for the Landlord, who stated that the door to the bedroom was damaged during the tenancy, over the testimony of the male Tenant, who stated that the damage to the door occurred prior to the start of the tenancy.

I favoured the testimony of the Agent for the Landlord in regards to the damaged door, in part, because the condition inspection report that was completed at the start of the tenancy indicates the door was not damaged at the start of the tenancy.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report does not indicate that the bedroom door is damaged, I find that it is reasonable to conclude that the door was not damaged at the start of the tenancy.
I find that the male Tenant's testimony that he inadvertently recorded that there was damage was to the "walls and trim" of the bedroom rather than to the "door" of the bedroom, is simply not sufficient to refute the information written on the report.

I favoured the testimony of the Agent for the Landlord in regards to the damaged door, in part, because the version of events provided by the Landlord is simply more probable. In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the male Tenant's testimony that he repaired the door at the end of the tenancy even though the Tenants did not damage the door is unlikely. I find it more likely that he repaired the door because it was damaged during the tenancy.

On the basis of the photographs submitted in evidence I find that the repair to the door made by the Tenant was inadequate because it was not cosmetically pleasing. I find that the photograph of the repair that was taken on the date of the inspection is inconsistent with the male Tenant's opinion that the repair was barely noticeable and the opinion of the Tenant's friend who concluded that the repair was well done.

For these reasons I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to adequately repair the damaged door at the end of the tenancy.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. I find that the Landlord failed to establish the true cost of replacing the door. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord's testimony that it cost $210.00 to replace the door. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts.

As the Landlord failed to establish the true cost of replacing the door, I dismiss the Landlord's claim for $200.00.

As the Landlord has failed to establish that it is entitled to compensation for the damaged door, I dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

Section 28 of the Act stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, 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.

As the Tenants are seeking compensation for loss of quiet enjoyment, they bear the burden of proving their claim.

On the basis of the undisputed evidence I find that the Tenants reported being disturbed by the occupants of the upper suite in January of 2018 and that the Landlord responded appropriately by bringing that complaint to the attention of the occupants of the upper suite.

I find that the Tenants have submitted insufficient evidence to establish that they reported any noise complaints regarding the occupant of the upper suite after January 07, 2018. In reaching this conclusion I was heavily influenced by the absence of independent evidence that corroborates the Tenants' submission that they made additional verbal complaints or that refutes the Agent for the Landlord's testimony that no additional complaints were made.

As the Tenants have failed to establish that they reported any noise complaints regarding the occupant of the upper unit after January 07, 2018, I find that they are not entitled to any compensation for a loss of the quiet enjoyment of the rental unit as a result of noise emanating from the upper suite. A landlord cannot protect a tenant's right to quiet enjoyment if the landlord is not aware a tenant is being disturbed.

I find that the Tenants have submitted insufficient evidence to establish that they were unreasonably disturbed by noises emanating from the Agent for the Landlord's son's bedroom. In reaching this conclusion I was heavily influenced by the male Tenant's testimony, in which he described being able to hear talking, coughing, and laughing. I find that these are normal daily living activities and there can be no reasonable expectation that the Landlord could take steps to prevent someone living in another area of the residential complex from engaging in these daily living activities.

As the Tenants have failed to establish that they were unreasonably disturbed by noises for the Agent for the Landlord's son's bedroom, I find that they are not entitled to any compensation for a loss of the quiet enjoyment of the rental unit as a result of that noise.

Even if I accepted that Tenants' submission that they were disturbed by noise emanating from the lobby and hallway, I find that they have submitted insufficient evidence to establish that they reported those concerns to the Landlord. In reaching this conclusion I was heavily influenced by the absence of independent evidence that corroborates the Tenants' submission that they reported this concern to the Landlord or that refutes the Agent for the Landlord's testimony that such reports were made.

As the Tenants have failed to establish that they reported any noise complaints regarding noise from common areas, I find that they are not entitled to any compensation for a loss of the quiet enjoyment of the rental unit as a result of that noise. As has been previously stated, a landlord cannot protect a tenant's right to quiet enjoyment if the landlord is not aware a tenant is being disturbed.

I find that the Tenants have submitted insufficient evidence to establish that they complained about leaves being left outside their window until they served the Landlord with an Application for Dispute Resolution. In reaching this conclusion I was heavily influenced by the absence of independent evidence that corroborates the Tenants' submission that they verbally reported the presence of the leaves or that refutes the Agent for the Landlord's testimony that this concern was not reported until the Application for Dispute Resolution was served.

I find that the Tenants have submitted insufficient evidence to establish that the leaves were not removed shortly after the Landlord was notified of the Tenants' concern about the leaves. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that it took approximately one month to remove all of the leaves or that refutes the Agent for the Landlord's testimony that they were removed the day after they became aware of the Tenants concern.

As the Tenants have failed to establish that the bags of leaves were not removed within a reasonable time of the Landlord being informed of the Tenants' concern, I find that they are not entitled to any compensation for a loss of the quiet enjoyment of the rental unit as a result of the bags of leaves being left on the residential property.

I find that the Landlord acted reasonably when she contacted a pest control company regarding the report of an infestation in the rental unit. Upon learning that this was a seasonal infestation that would rectify itself within a few days, I find it was reasonable for the Landlord to simply allow nature to take its course.

In reaching this conclusion I was influenced by the absence of evidence that the infestation was reported on more than one occasion. Although the male Tenant contends that it was reported on at least two occasions, there is simply no independent evidence to corroborate that testimony. Had the Tenants established that the infestation was reported on more than one occasion, I would likely have concluded that it would have been reasonable to have a pest control inspect the unit.

As the Tenants have failed to establish that they reported a pest infestation on more than one occasion, I find that they are not entitled to any compensation for a loss of the quiet enjoyment of the rental unit as a result of a pest infestation.

After considering all of the evidence I find that the Tenants have failed to establish that they are entitled to compensation for loss of quiet enjoyment, and I dismiss their application for compensation.

The Tenants submitted no evidence in support of their application for compensation for moving costs or lost wages, in spite of being provided with the opportunity to present additional

evidence at the conclusion of the hearing. As the Tenants did not submit evidence in support of this claim, I must dismiss their claim for such costs.

As the Tenants have failed to establish the merit so their Application for Dispute Resolution, I dismiss the Tenants' application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

Neither party has established a monetary claim and both applications for a monetary Order are dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 28, 2018

Residential Tenancy Branch