



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on March 19, 2018, wherein the Tenant sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"), an Order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, monetary compensation from the Landlords as well as recovery of the filing fee.

The hearing was conducted by teleconference on May 31, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No 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.

Preliminary Matter

The Tenant confirmed that she was agreeable to moving from the residence as of July 31, 2018 as per the effective date of the Notice. Accordingly, her request to cancel the Notice was no longer at issue.

Issues to be Decided

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

Background and Evidence

The Tenant testified as follows. She stated that the tenancy began July 31, 2017 for a one year fixed term with a move out clause. Monthly rent was \$2,700.00 per month for a two bedroom apartment.

The Tenant sought compensation for breach of her right to quiet enjoyment claiming that the Landlords, and their agents, were constantly in the rental unit doing repairs as well as showing the rental property once it was listed for sale.

In terms of the repairs, the Tenant testified that there were many things wrong with the rental unit that weren't noticed when she first moved in, including the bathroom shower head was broken, the dishwasher was not in working condition, the rental unit was not clean, there were cracks in the walls, the blinds did not work, the closet door was coming apart, and the storage unit was full of someone else's belongings. She confirmed that she brought these to the Landlords' agent's attention and then had to communicate with the agent's assistant, L.H. She stated that she "then had to endure lots of communication, including late at night phone calls and text messages" throughout August, September and October from L.H. arranging tradespeople to come in and look at the issues.

The Tenant stated that the work was going on during the day, usually during the weekdays and some weekends. She confirmed that during this time, her rental unit was accessed approximately 10 days during August, September and October, or 3-4 times a month.

The Tenant also stated that the property was then listed for sale at the end of January 2018. She stated that the Landlords' real estate agent, and potential buyers, attended at the rental unit approximately 10 days in February until March 5, 2018 when they had an accepted offer from the potential buyer. She stated that during this time she had to be away from the rental unit for showings, and therefore could not use the rental unit.

The Tenant claimed the sum of \$3,382.00 for compensation for breach of her right to quiet enjoyment due to the presence of contractors and repair persons, and real estate agents during the 20 days noted including \$1,000.00 for the negative impact on her mental health.

The Tenant stated that basically the entire time she was physically living in the rental unit there were disturbances. She noted that for the month of December and the first 20 days of January she was on holidays and although she still paid rent she was not affected by the work at the property or the showings.

In response to the Tenant's claims, the Landlords' agent, N.K. testified as follows. She confirmed that it was the Landlords' position that the repairs were required and the Landlord was obligated to attend to the repairs. She submitted that the disturbances were not unreasonable. She also stated that the rental unit showings were few and that they did their best to minimize the impact on the Tenant. She further stated that she offered to be at the rental unit during the repairs to minimize the inconvenience to the Tenant; however, the Tenant stated that she did not trust her and as such chose to be there.

N.K. also noted that the Tenant wanted to move in a day early and as such, N.K. was not able to inspect the property to ascertain its condition.

N.K. stated that her assistant, L.H., communicated with the tradespeople as she speaks the same language as the tradespeople, and as such it was L.H. who scheduled appointments with the tenant.

N.K. confirmed that the Tenant is entitled to a free month's rent as a result of the issuance of the Notice.

N.K. confirmed that as the property has sold, and all repairs are completed that there is no reason anyone should be coming into the rental property.

N.K. further stated that the realtor compensated the Tenant for the photoshoot and the open house in the amount of \$100.00 gift certificate for a popular coffee shop. She submitted this was a reasonable some for the minimal impact on the Tenant.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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 their 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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or tenancy agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides in part as follows:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The above mandates a landlord to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards. In the case before me I find the Landlords complied with the above by attending to the repairs as requested by the Tenant.

The Tenant alleges that her right to quiet enjoyment was breached by the constant repairs and showings of the rental unit over the course of 20 days of her 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 consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlords breached section 28. I find that the attendance by tradespeople and prospective buyers was a temporary discomfort or inconvenience, not a breach of her right to quiet enjoyment. I also find that the Landlords' agent offered to be at the rental unit while the repairs were going on, and the Tenant declined this offer. In doing so I find the Tenant did not mitigate her losses. I accept the Landlords' agent's evidence that the Tenant was compensated for the inconvenience of the open house and photo shoot.

I also note that the Tenant seeks monetary compensation from the Landlord in the amount of \$3,382.00 for 20 days she claims she was impacted by the attendance of tradespeople and persons viewing the property when it was listed for sale. This sum includes \$1,000.00 for stress and what she claims was a negative impact on her mental health and loss of work.

The Tenant paid \$2,700.00 per month in rent, or \$88.77 per diem. As such, even in the event the rental unit not been usable at all during the 20 days in question, her maximum entitlement would be \$1,775.34 for the 20 days in which the Tenant claimed her right to

quiet enjoyment was impacted. I am unable, based on the evidence before me to find that the Tenant has proven her losses as claimed. I therefore dismiss the Tenant's monetary claim.

Conclusion

The Tenant agreed to vacate the rental unit as of the effective date of the Notice on July 31, 2018. **Accordingly, I grant the Landlord an Order of Possession effective 1:00 p.m. on July 31, 2018.**

Pursuant to section 51 of the *Residential Tenancy Act*, the Tenant shall be entitled to withhold payment of the July 2018 rent.

The Tenant's claim for monetary compensation in the amount of \$3,382.00 for breach of her right to quiet enjoyment is 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 *Residential Tenancy Act*.

Dated: June 22, 2018

Residential Tenancy Branch