Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

A hearing was convened on May 07, 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 female Tenant stated that on October 11, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 13 pages of evidence the Tenants submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 09, 2018, April 16, 2018, April 17, 2018, and April 26, 2018 the Tenants submitted numerous digital files and images to the Residential Tenancy Branch. The female Tenant stated that two CDs containing these files were left in the Landlord's mail box on April 08, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The hearing on May 07, 2018 was adjourned for reasons outlined in my interim decision of May 07, 2018.

The hearing was reconvened on July 03, 2018 and was adjourned for reasons outlined in my interim decision of July 04, 2018.

The hearing was reconvened on September 21, 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.

Preliminary Matter #1

I was unable to access any evidence during the hearing on September 21, 2018 due to a RTB system failure. The parties referred to various documents during the hearing, which I was able to prior to the hearing, after the hearing concluded, and prior to rendering this decision.

Preliminary Matter #2

At the hearing on September 21, 2018 the Landlord provided the name and telephone number of a second witness. I attempted to contact that party on two occasions during the hearing and was re-directed to voice mail on both occasions. The Landlord was unable to rely on this witness due to her unavailability.

Issue(s) to be decided:

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

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began on October 01, 2006;
- the rent of $1,100.00 was due by the first day of each month; and
- the rental unit was vacated on December 31, 2015.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because their access to the yard and patio was restricted.

In support of this portion of the claim the female Tenant stated that:

- when this tenancy began they had the use of the patio beside the rental unit and they shared the yard with the Landlord;
- they frequently used these areas;
- the sliding glass doors in the rental unit open onto the patio;
- in June of 2014 the Landlord told them they were no longer able to use the yard and the patio because he was landscaping the rear yard; and

- their attempts to resolve this issue with the Landlord have been unsuccessful.

In response to this portion of the claim the Landlord stated that:

- there is a sliding glass door that leads from the rental unit onto a patio;
- the Tenants were never permitted to use the patio or the rear yard;
- in 2014 he erected a sign that informed the Tenants they were not allowed to use the yard or the patio because he was landscaping the rear yard; and
- prior to 2014 the Tenants used the yard/patio one or two times per month.

The Landlord and the Tenants agree that section 1 of their tenancy agreement reads, in part: “the rental unit (not including the grounds) is a garden level suite located at”. The Landlord contends that this term establishes that the Tenants were not permitted to use any portion of the patio or yard. He subsequently acknowledged that the Tenants were permitted to use the walkway leading to the door of the rental unit.

The female Tenant stated that she understood that the term excluding the use of the grounds of the residential property was not something the Landlord intended to enforce, as the Landlord specifically told them they could use the patio and the yard. The Landlord stated that he did not tell the Tenants they could use the patio and the yard.

The female Tenant stated that in 2007 the Landlord asked them if they wanted his barbecue; that they told him they wanted the barbecue; and that he moved it to the patio. The Landlord stated that he was not certain the Tenants wanted the barbecue and that he moved it to the patio with the expectation that they would move it to the walkway leading to the front door of the rental unit.

The female Tenant stated that when she moved into the rental unit there were mats inside and outside of the sliding glass door leading to the patio. The Landlord stated that he left the mat outside the sliding glass door so his dog would have a comfortable place to rest.

The Tenants are seeking compensation of $3,663.00 in compensation for being unable to use yard and patio since June of 2014. This claim is based on their estimate that the rental unit is 819 square feet and the yard and patio are 480 square feet, which they calculate to be 37% of the rented space.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord had a surveillance camera installed on the rental property. In support of this portion of this claim the female Tenant stated that:

- they were not aware that a surveillance camera had been installed until the Landlord mentioned it at a previous dispute resolution hearing in 2015; and
- they never saw the camera so they do not know where it was aimed.

In response to this portion of the claim the Landlord stated that:

- he thinks he installed the camera in 2014;
- the camera was not functional;
- he installed the camera to prevent people from opening his rear gate;
- he did not tell the Tenants about the camera as he assumed they would see the camera;
- the camera was aimed at the rear gate;
- the camera was not aimed at the rental unit.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the yard in the rental unit was not properly maintained.

In support of this portion of the claim the female Tenant stated that:

- when she moved into the rental unit the yard was in very good condition;
- she does not have any photographs of the yard that were taken at the start of the tenancy;
- the yard was poorly maintained after the Landlord moved off the residential property in 2007;
- the yard was poorly maintained after the Landlord returned to the residential property in 2010;
- some yard maintenance was completed in 2014;
- a photograph taken of the yard in June of 2014 is reflective of the condition of the yard at the start of the tenancy;
- and
- the yard was again allowed to deteriorate after 2014.

In response to this portion of the claim the Landlord stated that:

- when the tenancy began the yard was very well maintained;
- when he moved off of the residential property in 2007 he made arrangements to have a third party maintain the yard;
- he does not know if the third party maintained the yard appropriately;
- when he returned to the residential property in 2010 he resumed responsibility for the yard;
- when he returned to the residential property in 2010 he opted to leave the rear

yard in a more “wild” condition; and

- he understood the Tenants were concerned with the condition of the property.

During the hearing the Tenants referred to photographs of the yard which were taken on November 25, 2014, July 18, 2015, May 12, 2015, November 25, 2015, and December 23, 2015. The Tenants also referred to a photograph taken in June of 2014, which they contend is similar to the condition of the yard at the start of the tenancy. The Landlord acknowledged that these photographs fairly represented the condition of the yard when the photographs were taken.

The Landlord stated that in 2014 the female Tenant approached him and asked him if a community gardening group could use the side yard for gardening; that he agreed to that proposal; and, as such, he stopped maintaining that area of the yard.

The female Tenant stated that she asked the Landlord if the community garden could use the back yard; the community garden determined the back yard was not suitable for their needs; and she never told the Landlord the community gardeners would be caring for the property.

The Witness for the Landlord stated that he was the person responsible for maintaining the yard when the Landlord left in 2007 and “at times” the gardens were in very good condition. He stated in 2013 he did extensive landscaping in the yard and it looked very good.

The Witness for the Landlord stated that the Tenants asked him not to maintain the yard directly in front of the rental unit, so he did not maintain that area. The female Tenant stated that they did not ask the Witness to refrain from working in that area.

The Tenants are seeking compensation of $195.00 for loss of quiet enjoyment of the rental unit, in part, because there were rats in the ceiling. The Landlord and the Tenants agree that the rats were reported to the Landlord on several occasions, that the Landlord installed an electronic pest repellant to deter the rats; the pest repellant was not effective; and that the Landlord did not hire a pest control company to rectify the problem. The Landlord stated that he attempted to scare the rats away with noise and he attempted to block access points, but he was unable to prevent them from entering the residential complex.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because personal property was piled in front of their kitchen window, which

partially blocked their view. The Landlord agrees that this window was partially blocked by property that belonged to his roommate.

The Landlord and the Tenants agree that the Tenants asked the Landlord to remove the property in December of 2014. The Landlord stated that he asked his roommate to move the property but the roommate did not do so due to an injury. The Landlord stated that he did not move the property himself because the Tenants could still see out of the window. The Tenants contends that they eventually moved the personal property away from their window in March of 2015.

The Landlord stated that personally property has been stored in that general vicinity since 2010, although he does not know if it was always blocking the Tenants' window.

The Tenants submitted photographs of the property blocking their window. The Landlord stated that he believes the photographs have been "staged", as he would not have placed the dog carrier or the ladder in that location. The Tenants stated that they did not move any of the personal items prior to taking a photograph of the window.

The Witness for the Landlord stated that he believes the photographs of the area near the window were staged. He stated that he thinks the photographs were staged, in part, because his property was not blocking the window. He stated that he also thinks the photographs were staged because the Tenants were very adversarial during the tenancy.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord erected a tarp that blocked light from entering their patio and the rental unit.

The Landlord and the Tenants agree that the Landlord erected this tarp in July of 2014 and that it was left in place for several months. The parties agree that the Tenants never asked the Landlord to remove the tarp.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the exterior of the house was not properly maintained. The female Tenant stated that the exterior of the house, including the windows, was never cleaned during the tenancy. She stated that the exterior of the house was covered in green mould. She stated that the Tenant never asked the Landlord to clean the house, although she believes the Landlord should have understood it needed cleaning as a part of regular maintenance.

The Landlord agreed the exterior of the house needed cleaning. He stated that algae grew on the exterior of the house, which he periodically cleaned with a brush. He estimates he cleaned the exterior of the house, in places, 3 or 4 times during the tenancy.

The Tenants referred to several photographs of the exterior of the house that were taken in 2014 and 2015. Landlord agrees that those photographs fairly represent the condition of the exterior of the rental unit, which he does not think is particularly bad.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because they were repeatedly disturbed by noise from the Landlord's dog, loud arguments, and other noise emanating from the upper suite.

The Tenants and the Landlord agree that since the summer of 2014 the Tenants reported being disturbed by the Landlord's dog approximately once per week.

The female Tenant stated that at times the dog would bark for 5 to 10 minutes without intervention from the Landlord or his roommate. The female Tenant stated that the dog woke them in the late evening/early morning hours several times each week.

The Landlord stated that the dog did not bark continuously; that he frequently left the door open so the dog could re-enter his home without barking; that he left the dog outside by itself approximately fifty percent of the time; that the dog would bark even if he was outside with him; he would intervene to try to stop the dog from barking if he was with the dog; and he would call the dog back inside when it was barking if he was not with the dog.

The Tenants played one of the audio files during the hearing, in which the dog could be heard barking. I note that the barking is relatively loud. The Landlord stated that this was not typical of his dog and he presumes the dog must have been disturbed by something at the time of that recording.

The Tenants submitted a letter from a personal friend who declared, in part, that the Landlord's dog would bark for extended periods. The Landlord stated that he cannot respond to the letter because he did not know the author the letter.

The Tenants submitted a letter from neighbours who declared, in part, that the Landlord's dog was left in the yard during the day during which time he barked

repeatedly and sometimes continuously. The Landlord stated that he cannot respond to the letter because he does not know the identity of the neighours.

The Tenants and the Landlord agree that since the summer of 2007 the Tenants frequently reported being disturbed by the Landlord's roommate.

The female Tenant stated that approximately once per week she could overhear the roommate fighting with his girlfriend. She stated that they were often disturbed by other noises, such as people cooking and walking on hardwood floors in shoes.

The Landlord stated that he spoke with his roommate regarding the reported disturbances; that his roommate is an actor; and the roommate speculates that the Tenants were overhearing him rehearsing lines.

The Landlord stated that he has listened to the audio files submitted by the Tenants and he does not believe the noise level is unreasonable.

The Tenants submitted letters from personal friends who declared, in part, that they have heard loud arguments in the suite above the rental unit. The Landlord stated that he cannot respond to the letters because he did not know the authors the letters.

The Tenants submitted a letter from neighbours who declared, in part, that they have heard frequent loud arguments from the yard, which were loud enough to be heard from within their home. The Landlord stated that he cannot respond to the letter because he did not know identity of the neighbours.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because they felt threatened and harassed. The Tenants contend that the Landlord threatened to evict them if they did not sign a mutual agreement to end the tenancy. The Landlord stated that he told the Tenants he would begin the "eviction process" if they did not sign a mutual agreement to end the tenancy.

The Tenants base the harassment allegation, in part, on the basis the Landlord attempted to end the tenancy on four occasions. On one occasion the Landlord attempted to end the tenancy by serving them with a Notice to End Tenancy for Unpaid Rent after they withheld rent due to an illegal rent increase. On another occasion the Landlord attempted to end the tenancy early and on another occasion the Landlord served the Tenants with a One Month Notice to End Tenancy for Cause. Each of the above 3 attempts to end the tenancy were struck down at dispute resolution

proceedings. The Landlord was successful in ending the tenancy after the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use.

The Tenants contend the Landlord harassed them when they made false allegations to the police regarding the female Tenant forcing her way into the rental unit, when she actually went there to complain about the Landlord's dog. The Landlord stated he phoned the police because the Tenant would not leave his home.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord misrepresented the rental unit as being well insulated, with 6 inches of insulation between the rental unit and the upper suite.

Analysis:

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 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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

On the basis of the undisputed evidence I find that there is a clause in the tenancy agreement that declares "the rental unit (not including the grounds) is a garden level suite located at…". I find that this term is unenforceable as it is impossible for the Tenants to comply with this term of the tenancy, given that they must use the walkway to access the rental unit. Even if this term in the tenancy agreement was enforceable, I find that the parties, by their words and actions, have mutually agreed to disregard this term of the tenancy agreement.

I favour the testimony of the female Tenant, who stated that the Landlord told them they could use the patio and the yard, over the testimony of the Landlord, who stated that he did not tell the Tenants they could use the patio and the yard.

I favoured the testimony of the female Tenant over the Landlord in regards to the yard/patio, in part, because of the undisputed evidence that the Tenants used the patio adjacent to the rental unit and the rear yard for several years during the tenancy, albeit they do not agree on the frequency of that use. The fact the Tenants used those areas for several years and there is no evidence that the Landlord objected to them using those areas until 2014, lends credibility to the Tenant's submission that they were entitled to use those areas during the tenancy.

I favoured the testimony of the female Tenant over the Landlord in regards to the yard/patio, in part, because the undisputed evidence establishes that the sliding glass doors in the rental unit lead to this patio. As Tenants are typically entitled to use a patio that can be accessed via a sliding glass door in their rental unit and there is no evidence that they were specifically told not to use this patio prior to 2014, I find that the presence and location of the patio door serves to corroborate the Tenants' submission that they were entitled to use the patio during the tenancy.

I favoured the testimony of the female Tenant over the Landlord in regards to the yard/patio, in part, because the Landlord left a mat on the outside of the sliding glass door leading to the patio. I find that the presence of this mat serves to corroborate the Tenants' submission that they were told they could use the patio during the tenancy.

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 that the Landlord's testimony that he left this mat outside for his dog to use lacks credibility when it is considered in the entire context of this matter.

I favoured the testimony of the female Tenant over the Landlord in regards to the yard/patio, in part, because the Landlord gave the Tenants a barbecue in 2007 and he delivered it to patio. I find that the delivery of the barbecue to the patio serves to corroborate the Tenants' submission that they were told they could use the patio during the tenancy. I find that if the Landlords were not entitled to use the patio the Landlord would have delivered it to the walkway leading to the rental unit, which is the area the Landlord testified the Tenants were permitted to use.

I find that the Landlord breached section 28 of the *Act* when he prevented them from using the patio and back yard of the residential complex, for the period between June of 2014 and December 31, 2015. I therefore find that the Tenants are entitled to compensation arising from this breach.

In determining the amount of compensation due to the Tenants as a result of being unable to use the patio/yard for a period of time, I find it is not appropriate to compare the square footage of the rental unit with the square footage of the patio/yard, as space in a rental unit is far more valuable. Determining the amount of compensation in such circumstances is highly subjective however in my experience the value of this tenancy was reduced by approximately 10%, or $110.00 per month, as a result of the Tenants being unable to use the patio/yard. I therefore award the Tenants compensation of $1,320.00 for being unable to use the patio for approximately 12 months.

I find that the Tenants have submitted insufficient evidence to establish that the surveillance camera the Landlord installed breached their right to the quiet enjoyment of the rental unit. In reaching this conclusion I was heavily influenced by the absence of any evidence that refutes the Landlord's testimony that the camera was not functional or that the camera was not aimed at the rental unit. In reaching this conclusion I was further influenced by the Tenants submission that they did not know the camera existed until the Landlord disclosed this fact. As the Tenants were not aware of the camera and there is no evidence it was used in an intrusive manner, I find that Tenants have failed to establish that the camera breached their right to the quiet enjoyment of the rental unit and I find they are not entitled to compensation as a result of the camera.

I find that the Tenants have established that the yard was in good condition at the start of the tenancy and that it was not well maintained after 2007, with the exception of some landscaping that was completed in 2014. In reaching this conclusion I was heavily influenced by the testimony of the Tenants and the Tenants' photographs that were submitted in evidence. The photographs clearly show that the yard was in poor condition during the latter part of the tenancy, with the exception of the photograph that

was taken in June of 2014.

I find that the Landlord's testimony that he left the yard in a "wild" stated when he returned to the property in 2010 corroborates the Tenants' submission that the yard was not well maintained.

I find that the Landlord's testimony that in 2014 he stopped maintaining the side yard further corroborates the Tenants' submission that the yard was not well maintained. As there is no evidence to corroborate the Landlord's submission that the Tenants made arrangements to have community gardeners care for any portion of the yard or that refutes the Tenants' submission that they did not make arrangements to have community gardeners care for any portion of the yard, I find that the Landlord remained obligated to care for the yard.

I find that the Witness for the Landlord's testimony that "at times" the yard looked very good and that the yard was landscaped in 2013 is corroborated by the Tenant's photograph that was taken in June of 2014. His testimony does not, however, refute the Tenants' submission that the yard was not consistently well maintained since 2007.

I find that the Witness for the Landlord's testimony that he did not maintain a portion of the yard at the request of the Tenants further corroborates the Tenants' submission that the yard was not properly maintained. As there is no evidence to corroborate the Witness for the Landlord's testimony that Tenants asked him not to maintain a particular area of the yard or that refutes the Tenants' submission that they did not make such a request, I find that the Landlord remained obligated to care for the yard.

I find that the Landlord breached the Tenants' right to the quiet enjoyment of the rental unit by not maintaining the yard. As has been previously stated, determining the amount of compensation in such circumstances is highly subjective however in my experience the value of this tenancy was reduced by approximately 2%, or $264.00 per year, as a result of the Landlord not properly maintaining the yard. Given that the Tenants have already been compensated for loss of use of the yard, I find that this lesser amount is sufficient to compensate for the reduced aesthetic value of the tenancy.

I therefore award the Tenants compensation of $1,584.00 for the reduced aesthetic value of the yard. This award does not include compensation for 2007, as I find it reasonable to conclude that the property did not deteriorate significantly during the first year of the Landlord's absence. The award also does not include compensation for 2013, as the evidence shows some significant landscaping was completed in that year.

This award also does not include compensation for 2014, as I find it reasonable to conclude that the property did not deteriorate significantly in the first year after the landscaping of 2013.

On the basis of the undisputed evidence I find that there were rats in the ceiling. I find that the presence of the rats negatively impacted the Tenants' right to the quiet enjoyment of the rental unit. Although the Landlord attempted to address this concern he did not, in my view, take sufficient steps to address the problem, as he did not hire a pest control expert. I find that the Tenants' claim of $195.00 for this breach is reasonable and I grant that award.

On the basis of the Tenants' testimony and the photographs submitted in evidence, I find that a significant amount of property was being stored in front of the Tenants' kitchen window. I find that this property blocked the Tenants' view and restricted the amount of light entering the unit.

On the basis of the undisputed evidence I find that in December of 2014 the Landlord was asked to remove the property blocking the window, and that he did not do so. I find that by failing to comply with this request the Landlord breached the Tenants right to the quiet enjoyment of their rental unit.

As has been previously stated, determining the amount of compensation in such circumstances is highly subjective however in my experience the value of this tenancy was reduced by approximately 2%, or $22.00 per month, as a result of the blocked window. I therefore find that the Tenants are entitled to compensation of $88.00 for the period between the time the problem was reported in December of 2014 and the time the Tenants removed the property in March of 2015.

I find that the Tenants are not entitled to compensation for any period prior to December of 2014, as there can be no reasonable expectation that the property would be removed from the window until the Tenants informed the Landlord the property was bothersome.

In adjudicating this matter I have placed no weight on the Landlord's testimony that the photographs of the property under the window were "staged", as the Landlord submitted no independent evidence to support this submission. I find it nonsensical to suggest that the Tenants would "stage" the photographs by adding a dog carrier and ladder to the area, given that the presence of those items do not significantly increase the clutter in that area.

In adjudicating this matter I have placed no weight on the Witness for the Landlord's testimony that the photographs of the area near the window were staged because his property was not blocking the window. I find that this testimony lacks credibility, as it is contradicted by the evidence of both the Landlord and the Tenants, both of whom acknowledge that the window was partially blocked by the Witness' property.

On the basis of the undisputed evidence I find that the Tenants never asked the Landlord to remove a tarp that was erected in July of 2014. I find that the Tenants are not entitled to compensation as a result of the tarp, as there can be no reasonable expectation that the tarp would be removed unless the Tenants informed the Landlord the tarp was bothersome.

Section 32(1) of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

On the basis of the photographs submitted in evidence by the Tenants, I find that the exterior of the house required cleaning. I cannot, however, conclude that the condition of the rental unit did not comply with health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, made the unit unsuitable for occupation by a tenant. I therefore cannot conclude that the Landlord breached section 32(1) of the *Act* in regards to exterior cleaning.

On the basis of the undisputed evidence I find that the Tenants never asked the Landlord to clean the exterior of the house. I find that the Tenants are not entitled to compensation as a result of the condition of the exterior of the house, as there can be no reasonable expectation that the house would be cleaned unless the Tenants informed the Landlord the condition of the exterior was bothersome.

On the basis of the undisputed evidence I find that the Tenants were frequently awakened by the Landlord's dog during the late evening early morning hours. Regardless of whether dog barked continuously for 5 or 10 minutes, as the Tenants contend, or the dog barked for much shorter periods of time, as the Landlord contends, it is clear that the noise was sufficient to awaken the Tenants.

I find that the Landlord was apparently unable to prevent the dog from barking, even if he went outside with the dog. I find that the Landlord did not adequately protect the Tenants' right to the quiet enjoyment of the rental unit, which he could have done by

simply keeping the dog inside during the late night and early morning hours.

As has been previously stated, determining the amount of compensation in such circumstances is highly subjective however in my experience the value of this tenancy was reduced by approximately 5%, or $55.00, per month, as a result of the barking dog. I therefore find that the Tenants are entitled to compensation for the time between when the problem was reported in the summer of 2014 and December of 2015, which I calculate to be 18 months. I grant the Tenants compensation of $990.00 in regards to the barking.

On the basis of the undisputed evidence I find that the Tenants were frequently disturbed by arguments in the suite above the rental unit. I find that the Tenant's testimony regarding these disturbances is corroborated by written submissions from neighbours and personal friends. Conversely, I note that the Landlord submitted no evidence from neighbours to refute the submission.

I have listed to a sufficient number of the audio files which were recorded from within the rental unit to satisfy myself that the disturbances were the result of people conversing and they were not a person acting or reciting lines. However even if the Tenants were being disturbed by a roommate reciting lines, the noise level was clearly unreasonable if it can be heard in another unit.

As has been previously stated, determining the amount of compensation in such circumstances is highly subjective however in my experience the value of this tenancy was reduced by approximately 2%, or $22.00, per month, as a result of the noise emanating from the upper suite. I find that less compensation for this noise is warranted because it reportedly occurred less frequently than the barking dog. I therefore find that the Tenants are entitled to compensation for the time between when the problem was reported in the summer of 2007 and December of 2015, which I calculate to be 102 months. I grant the Tenants compensation of $2,244.00 in regards to the noise from the upper suite.

I have not granted compensation for noise related to cooking or walking on hardwood floors, as I find that those are daily living activity noises that must be tolerated when living in a shared residential complex.

Given the apparent animosity between the parties, I find it was reasonable for the Landlord to attempt to end the tenancy by mutual consent. I further find it was reasonable for the Landlord to inform the Tenants he would attempt to end the tenancy

through formal means if it did not end by mutual consent. I do not find this to be harassment.

I find it reasonable for a landlord to serve a Notice to End Tenancy for Unpaid Rent if the landlord does not receive all the rent the landlord believes is due. I find it reasonable even if it is subsequently determined that a tenant had the right to withhold rent as a result of an illegal rent increase, because many landlords are unfamiliar with this portion of the legislation. I do not find that making such a mistake constitutes harassment**.**

Given the apparent animosity between these parties, I find it reasonable for the Landlord to believe he had grounds to end the tenancy. The fact a RTB Arbitrator subsequently concludes that the Landlord did not have sufficient grounds does not, in my view, establish that the Landlord was harassing the Tenants when he served them with notices to end tenancy. In reaching this conclusion I was heavily influenced by the absence of any evidence to show that an Arbitrator concluded that service of the Notices to End Tenancy were frivolous or unwarranted.

Given the apparent animosity between these parties, I find it was reasonable for the Landlord to contact the police after the female Tenant confronted him in his home. Even if the subsequent police investigation determined there was no wrong doing, the act of reporting such an incident cannot be considered harassment.

I find that the Tenants have failed to establish that they were harassed by the Landlord and I dismiss their claim from compensation as a result of harassment.

I find that the claim of misrepresentation of the rental unit is frivolous and not worthy of consideration at these proceedings.

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

Conclusion:

The Tenant has established a monetary claim of $1,320.00 for being unable to use the yard; $1,584.00 for the reduced aesthetic value of the yard; $88.00 for a partially blocked kitchen window; $195.00 for the presence of rats; $990.00 for noise disturbances related to the barking dog; $2,244.00 for noise emanating from the upper suite; 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 served on the Landlord, 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: September 24, 2018

Residential Tenancy Branch