Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC LRE MNDCT FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to comply with the *Act,* regulation and/or tenancy agreement pursuant to section 62;
- An order to suspend or restrict the landlord's right to enter pursuant to section 70;
- A monetary order for damage or compensation pursuant to section 67;
- Reimbursement of the filing fee pursuant to section 72.

The tenants and the landlord appeared. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and the Application for Dispute Resolution. No issues of service were raised. I find the landlord was served under section 89 of the *Act*.The tenants acknowledged receipt of the landlord's evidentiary materials. No issues of service were raised by the tenants. I find the tenants were served in accordance with section 88.

The tenants stated they were vacating the unit on November 30, 2018 and withdrew their claims under sections 62 and 70.

Preliminary Issue

The landlord challenged being served with the tenants' second set of evidentiary materials and objected to the consideration of this evidence. The tenants testified they uploaded evidentiary material to the RTB file on October 15, 2018. They attempted to

personally serve the landlord with a USB containing the evidentiary material on October 19, 2018. However, the landlord refused to come to her door to accept the USB and the landlord called the RCMP. The parties agreed that the tenants gave the attending RCMP officer the USB who then offered it to the landlord. The landlord acknowledged she refused to accept the USB. The officer returned the USB to the tenants.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure requires that:

> *Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

Rule 3.7 of the Residential Tenancy Branch Rules of Procedure requires that:

> *To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.*

Section 88 of the *Act* states how to serve documents. One way is to leave a copy with the person being served. Other methods under section 88 include sending a copy by registered mail or leaving a copy in the person's mailbox.

The Rules of Procedure set out the course of action for a party when a respondent avoids service. Section 3.4 states:

> *If a respondent appears to be avoiding service or cannot be found, the applicant may apply to the Residential Tenancy Branch directly or through a Service BC Office for an order for substituted service.*

I find the landlord appeared to be avoiding service. However, I find the tenants in this case did not apply for substituted service as required. Therefore, I find the landlord was not properly served with the evidence filed on October 15, 2018. Accordingly, I will only consider the evidence filed and served by the tenants on the landlord with the Notice of Hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for damage or compensation pursuant to section 67?

Are the tenants entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The tenants provided considerable oral testimony. The landlord provided substantial oral and written evidence. The landlord submitted an index with attached documents organized under “breaches and warning letters” (13 items), 24-hour Notices (12), letters of reference (4), and audio recordings (4). Not all the evidence and testimony will be referenced in my decision. Only principal facts meeting the Rules of Procedure will be referenced.

The tenants claimed loss of quiet enjoyment of the unit due to the actions of the landlord. They requested a monetary order in the amount $9,100.00, being one-half of the rent they paid for July, August, September, and October 2018, and $1,000 for moving expenses.

The parties agreed they signed a 6-month fixed term tenancy beginning June 1, 2018 for rent of $2,275.00 a month payable on the first of the month. The unit is located above an apartment occupied by the landlord in a building owned by her.

At the beginning of the tenancy, the tenants provided a security deposit in the amount of $1,137.50. The security deposit is held by the landlord and the tenants have not given authorization to the landlord to retain any portion thereof.

The tenants submitted a copy of the residential tenancy agreement. The agreement contains two Addendums. The first Addendum includes 65 clauses. The second Addendum contains two clauses.

The tenants testified they were a couple with a young child when they entered into the tenancy agreement. The female tenant was pregnant, and she had their second child in mid-August 2018 and underwent surgery.

The tenants testified the landlord was “bossy and invasive” beginning right away. They described constant complaints from the landlord about noise. For example, the landlord complained about the male tenant taking his work boots off at the door of their unit, their child playing, the dog moving about, and once for the female tenant walking with shoes on. The landlord testified she believed the tenants were urging the child to make noise with the purpose of disturbing her. The tenants stated they did everything they could to minimize noise. As they were generally exhausted every night, the tenants testified they went to bed by 8 PM. However, they said nothing they did would satisfy the landlord or stop the continuous complaining which continued through the tenancy.

The tenants testified the landlord complained frequently about their dog and his feces, sending the tenants pictures of the feces, criticizing how the dog behaved and what he did. The landlord would mow around the feces. The tenants testified they attempted to clean the yard before every lawn mowing, but sometimes missed feces. The landlord said the tenants’ dog spread a disease to her dog. The tenants stated they did everything possible to meet the landlord’s demands and complaints. The tenants testified that they eventually found a new home for the dog rather than endure any more texts and emails about the dog and his feces.

The tenants said that they were in a “vulnerable” position, with the male tenant working a lot, and the female tenant pregnant, and then with a baby, recovering from surgery. No effort on their part was sufficient to stop the ceaseless complaining. They described the landlord as a “predator” who complained endlessly in texts and long emails about their ordinary activities.

For example, the tenants testified that the female tenant left a glass jar with water on a window ledge in the laundry room. This triggered a complaint from the landlord who said the jar could have fallen and wounded someone. During the hearing, the landlord repeated how dangerous the tenant’s action were in leaving the jar on the ledge. In a 2-page email to the tenants of August 30, 2018, a copy of which was submitted in evidence, the landlord commented unfavourably on several matters involving the tenants, and stated as follows:

> *I will not wait for your dog (who regularly stands on the ledge looking into my area when she hears us outside) to knock a glass mason jar off, potentially onto my dog or the other direction onto the deck for your kids to be injured, when immediate action could prevent this.*

The female tenant testified that she was so “stressed out” by the landlord that she stopped producing milk for her newborn, requiring medical assistance and medication. The doctor advised her to move out. The tenants testified they were experiencing financial challenges and did not have the resources to make another move so soon.

The tenants testified they repeatedly asked the landlord to leave them alone, so the female tenant could recover from the surgery and look after her newborn. They said the landlord did not heed their requests and any contact seemed to fuel reaction, instead of quelling it. They said the lengthy communication from the landlord and the complaints continued unabated about minor matters.

For example, the tenants referred to a one-page typed letter from the landlord to them complaining about how they let the washing machine spin off balance and citing the clause of the Addendum which they were violating.

Also, the tenants testified they asked the landlord not to mow the lawn early in the morning as they were both undergoing sleep deprivation, but the landlord mowed the lawn earlier than before.

The tenants said their mental health began to suffer and they both started to “break down”. They said it was “heart breaking” to rent such a lovely home and then to have to endure the abuse they suffered at the hands of the landlord. They stated it was “horrible” to deal for months with “false accusations” and to try to hold their own against the landlord.

The parties testified the landlord served the tenants with a notice to vacate the property on November 30, 2018 as she had sold the property. The tenants testified they will vacate at that time.

Both tenants testified that, to the day of the hearing, they feel traumatised and bullied by the landlord.

The landlord denied all the tenants’ allegations. In the landlord’s testimony and in her submitted emails and letters to the tenants, she pointed out the problems she perceived, such as noise, and her complaints about the tenants’ conduct. The landlord testified the tenants breached the agreement and addendums and “brought it on themselves”. She said the tenants engaged in 3-hour noise-making every evening as “retaliation”, making her life unbearable. The landlord stated she was just “following the rules”.

The landlord testified the male tenant was angry and "behaved well below age appropriate". In her written submissions, the landlord stated (as written):

> *Tenants use Life Day-to-Day Events ("baby", "toddler", "surgery", "stress) as excuses for non-compliance with the RTA and Addendums.*

The landlord testified she called the RCMP on October 19, 2018. She claimed the tenants "harassed her" and "cornered me in the garage, the [female tenant] coming out in her housecoat." The landlord did not upload a copy of the incident report. The landlord testified she increasingly called the police to complain about the tenants.

The landlord testified the tenants forced her to move out by their constant violations of the tenancy agreement and Addendums; she has lived elsewhere since a few days prior to the hearing.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of

probabilities, which means that it is more likely than not that the facts occurred as claimed.

Tenants' claim: moving expenses

The tenants claim $1,000.00 as their anticipated moving expenses in vacating the unit on November 30, 2018. The tenants entered into a fixed term tenancy agreement set to end on November 30, 2018. The landlord also served the tenants with a two-month notice requiring them to vacate on that day. The tenants have not disputed that notice.

I find the tenancy ends according to the *Act* and as per the landlord's two-month notice, at the end of November 30, 2018. In this regard, the landlord is not in violation of any provision of the *Act* or the tenancy agreement. It is the tenants' obligation to vacate the unit on November 30, 2018. Accordingly, I find the tenants' claim for reimbursement of future moving expenses does not meet the burden of proof required and I dismiss the tenants' claim in this regard without leave to reapply.

Tenant's claim: loss of quiet enjoyment

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states 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.*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

> *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 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).*
>
> (*emphasis added*)

I find the tenants were credible and genuinely disturbed by the landlord's accusations and actions. I accept their evidence that they were disturbed by the landlord's frequent and ongoing complaints made orally, in texts and in emails. I accept that the landlord accused the tenants inaccurately of making noise beyond normal sounds of family living. I find the tenants were disturbed by the landlord with a ceaseless barrage of her complaints and unfair accusations.

I find the landlord was aware she was renting the unit to a young family with a child and another due soon. She knew or ought to have known what it would be like to rent to the tenants.

I find the tenants informed the landlord in July 2018 that the female tenant was in the final stages of pregnancy, that the landlord's constant complaints disturbed them, and they wanted her to stop. I find the landlord knew that she was disturbing the tenants' quiet enjoyment of the unit; she nevertheless continued with apparent indifference, or perhaps acceleration, of her complaints.

I find it was reasonable to expect the landlord to adequately address the tenants' concerns by the end of July 2018. I find the female tenant had surgery in mid-August 2018 and the landlord's ongoing complaints and behaviour had a negative impact on the family.

I therefore find the landlord failed to take steps to assure the tenants' quiet enjoyment of the unit. I find the landlord failed in her duty to take reasonable steps to correct the situation. On a balance of probabilities, I find the tenants have met the burden of proving significant interference with their quiet enjoyment for the months of August, September and October.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

> *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.*

I find it is reasonable to place a nominal monetary value on the tenants' loss of quiet enjoyment for August, September and October 2018. I consider the fact the tenants remained in the unit at a sacrifice to their well being, including the decision to find a new home for the family dog. I accept the tenants' evidence they would have moved out if the female tenant were well enough and they had adequate financial resources.

In considering all the evidence and testimony, I find it reasonable to award the tenants the sum of $1,100.00 a month for each of the months of August, September and October 2018 for a total award of $3,300.00.

As the tenants have been successful in their application, they are entitled to recover $100.00 paid for the filing fee.

I therefore grant the tenants a monetary award of $3,400.00 as follows:

ITEM	AMOUNT
Loss of quiet enjoyment	$3,300.00
Reimbursement of the filing fee	$100.00
TOTAL	**$3,400.00**

Conclusion

The tenants are granted a monetary order in the amount of $3,400.00.

The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial 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: November 06, 2018

Residential Tenancy Branch