Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOME LIFE PROPERTY MANAGEMENT DIVISION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RR, FFT, OPC, MNDCL-S, FFL

Preliminary Matters – Interim Decision of October 29, 2019

On October 29, 2019, I issued an Interim Decision following a hearing of the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, including their alleged loss of quiet enjoyment of the premises, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

In that Interim Decision, I noted that there was not enough time to consider all of the tenants' application. As outlined in the following section of my Interim Decision, I exercised my discretion pursuant to the *Act* to adjourn the monetary portions of the tenants' application, save for the tenants' successful application to recover their filing fee for their application.

...Although I attempted to hear all of the tenants' application during the time allotted, I advised the parties at the beginning of this hearing that it might only be possible to hear evidence regarding the most pressing of the matters raised by the tenants in their application, the tenants' application to cancel the 1 Month Notice. I noted that time had already been allotted for me to hear the landlords' application to obtain an Order of Possession based on the same 1 Month Notice, as well as the landlords' application for a monetary award, on December 10, 2019 (see file reference above). With the agreement of the parties, I adjourned consideration of the tenants' monetary claim for a

retroactive rent reduction based on their alleged loss of quiet enjoyment to be heard on December 10, 2019, in concert with the landlords' own application for a monetary award. For this reason, the evidence and sworn testimony considered during the October 29, 2019 hearing was limited to those issues associated with the landlords' 1 Month Notice and the tenancy agreement between the parties that gave rise to the landlords' issuance of that Notice...

As a hearing had already been scheduled before me with respect to the corporate landlord's application for the following, I exercised my discretion to deal with those matters involving the landlord's 1 Month Notice at the October 29, 2019 hearing.

- an Order of Possession for cause based on the 1 Month Notice pursuant to section 55;
- a monetary order for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenants pursuant to section 72.

In my Interim Decision, I advised the parties that I would be addressing both the tenants' application for a monetary award and the landlord's application for a monetary award at the December 10, 2019 hearing that had already been scheduled for this tenancy.

In my Interim Decision, I allowed the tenants' application to cancel the 1 Month Notice issued in August 2019. I set aside that Notice and allowed the tenants' application to recover their filing fee for their application. My Interim Decision of October 29, 2019, fully addressed the reasons for taking these actions, and why this tenancy is continuing. Please refer to the Interim Decision for these details as I will only touch on that Interim Decision briefly in my consideration of the other issues before me.

At the reconvened hearing on December 10, 2019, the landlords requested that the name of the corporate landlord be changed to that which appears above. The landlords also requested that Landlord SR be added to the landlord's application. As the tenants had no objection to these requests, the landlords' names have been changed as requested by the landlord at the reconvened hearing.

In my Interim Decision, I provided the following direction to the parties with respect to the provision of written evidence between October 29, 2019 and the reconvened hearing of December 10, 2019.

...As I did not have time to consider the other monetary aspects of the tenants' application, I am adjourning the remainder of the tenants' application to be heard along with the landlords' application for a monetary award at the scheduled December 10, 2019 hearing referenced above. As mentioned to the parties at the hearing, neither party is allowed to provide any additional written evidence with respect to the tenants' application for a monetary award, nor are the tenants allowed to amend their existing application. The landlords remain at liberty to amend their own existing application, provided that the amendments are made in accordance with the RTB's Rules of Procedure with respect to amended applications. This would normally restrict the landlords to amendments to the issues identified in their original application...

Despite this very clear direction provided to the parties, the landlords chose to enter written evidence that extended beyond that which was necessary to consider the landlords' application for a monetary award. I have only considered the landlords' written evidence that involved a requested name change to the landlords and those issues involving the strata fine for speeding that the landlords claimed in their application.

Introduction

At the reconvened hearing, I considered the tenants' application for a monetary award for

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, including their alleged loss of quiet enjoyment of the premises, pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

I also considered the landlords' application for:

- a monetary order for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for their application from the tenants pursuant to section 72.

I consider all other issues identified in the parties' applications already addressed in the Interim Decision, or moot based on my Interim Decision.

Both parties attended the reconvened hearing on December 10, 2019, and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties confirmed receipt of one another's dispute resolution hearing packages and written evidence.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for their loss of quiet enjoyment during the course of this tenancy? Should any other orders be issued with respect to this tenancy? Are the landlords entitled to a monetary award for other money owed during the course of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenants moved into this three level home on January 29, 2019, with Landlord MP's (MP's) permission, a few days before their scheduled date to take occupancy of the premises on February 1, 2019. Prior to that time and until March 18, 2019, MP was managing this home co-owned by their sister, Landlord SR (the landlord) and the landlord's spouse.

The parties agreed that monthly rent is set at $2,600.00 for this three level home, containing three bedrooms on the main floor, a kitchen and living room area on the uppermost level, and a recreation room on the lowest level. The parties agreed that the tenants have paid $2,600.00 in monthly rent for each of the months since February 1, 2019, with the exception of the month of June 2019.

At a hearing of the tenants' application for dispute resolution on May 13, 2019, the parties agreed that the tenants would be allowed to deduct $1,925.00 from their June 2019 rent payment for their loss of use of the property from the beginning of their tenancy until May 13, 2019, the date of that hearing. This settlement agreement was confirmed in the decision of the Arbitrator presiding over the hearing of the tenants' application (see above for file reference). The settlement agreement reported by the Arbitrator read as follows:

During the hearing, the parties agreed to settle these matters, on the following conditions:

- *The parties agreed that the locks to the rental unit have been changed;*
- *The parties agreed that the owner will pay the tenants the sum of $1,100.00 which was previously offered; The landlord MP agreed to pay the tenants the amount of $825.00 for a total owing to the tenants of $1,925.00, This is comprised of loss of use of premises from when the tenancy commenced until May 13, 2019;*
- *The tenants will be entitled to deduct the amount of $1,925.00 from June 2019, rent in full satisfaction of this agreement; and*
- *The landlord agreed that the balance of work to be completed would be completed no later than May 27, 2019...*

In their decision, the presiding Arbitrator emphasized the following:

...The tenants are at liberty to apply for future loss of premises for the time period after May 13, 2019, if a settlement cannot be made. The tenants are a liberty to reapply for monetary compensation for loss of quiet enjoyment as indicated in their application...

The tenants provided the following information in their Monetary Order Worksheet outlining the details of their claim for a monetary award of $4,673.00:

Item	**Amount**
No Reasonable Privacy for the 47 day period from February 1- March 19, 2019	Unquantifiable
No Exclusive Use of Unit – 19 Days of major privacy violations (19 days @ 86.50 per day = $1,643.50)	$1,643.50
No Notice given to Enter (More than 40+ times)	Unquantifiable
Entry Between 8:00 a.m. and 9:00 p.m. - 10 days between February 1- March 19 (10 days @ $86.50 = $865.00)	865.00
Physical Health Damages – Doctor Records (4 days @ $86.50 = $346.00)	346.00
Mental/Emotional Damages – 17 days of panic attacks (17 @ $86.50 = $1,478.00)	1,478.00

Verbal Abuse – 4 Major Events (4 days @ $86,50 = $376.00)	376.00
Lost Wages – Daughter – 7 Days missed wages	1,125.00
Lost Wages= Tenant CC – 17 Days missed work	2,050.00
Total of Above Items	**$7,854.00**

At the reconvened hearing, Tenant CC (the tenant) testified that they were uncertain as to how to complete their Monetary Order Worksheet, and included the last two rows above. They said that these rows essentially duplicated the calculations identified in the previous rows of their Worksheet.

The tenants also confirmed at the hearing that they were not claiming for loss of use of the property for the period after May 13, 2019, the date identified in the previous Arbitrator's decision. They advised that the repairs and renovations were completed shortly after that date and that their claim was not for loss of use past that date. Although the tenant noted that there were incidents involving MP that occurred on May 20, 21, June 1, 3 and 3, they confirmed that these events happened outside the building and after MP was no longer acting as the landlord's agent regarding this tenancy.

At the hearing, the tenant did not dispute the landlords' application for a monetary award for a speeding fine imposed by the strata council for this property. As the landlord's application for a monetary award was not disputed by the tenant, I considered only the landlords' written evidence that the strata had initiated this fine, which the landlords will need to pay to the strata council for actions attributed to the tenants.

In their written evidence and during both hearings, the tenants maintained that from January 29, 2019 until mid March 2019 when MP was removed from acting as agent for the owner of the property, MP invaded their privacy on an ongoing basis and provided them with little quiet enjoyment. They alleged that MP undertook renovations that the tenants expected to have been completed by the time they took possession of the rental unit. They maintained that MP frequently entered the rental unit without alerting them that he would be working there and generally treated the rental unit as if it had not been rented to the tenants. The tenants gave testimony that these entries to the rental unit at all hours of the day were offensive and caused them considerable stress, leading to lost work time and health problems for the tenants.

For their part, MP testified that they only accessed the lower unit where the tenants were not living and that the tenants had given them oral authorization to conduct this work. MP maintained that the tenants were misrepresenting how often MP was accessing the rental property and that this access was done with their permission and full knowledge.

The tenants also maintained that they were never provided with a written Residential Tenancy Agreement (the Agreement) by MP who was then managing the property for the landlord until February 27, 2019. They claimed that MP gave many excuses as to why the tenants were not being provided with a written Tenancy Agreement. During the first six weeks of their tenancy, MP was undertaking major renovations to the premises while they resided there. The tenants gave sworn testimony and written evidence that they were not presented with the Agreement for signature by MP until February 27, 2019, and not on February 1, 2019, the date that MP had filled in for the signature of the Agreement. Although MP gave sworn testimony that the tenants signed the Agreement on February 1, 2019, MP confirmed that MP had actually completed all of the Agreement, including the date before handing the document to Tenants CC and JL for signature. The tenants provided written evidence that they were presented with little option on February 27, 2019, but to sign the Agreement under duress, as by that time MP had adopted an intimidating and threatening demeanour with them regarding their tenancy. They also claimed that they had received no indication from MP at that time that MP would withhold permission to find someone to move into the lower level of the rental home. The tenants maintained that they had an oral agreement with MP that was at odds with the terms as set out in the Agreement which they felt forced to sign on February 27, 2019, and not on February 1, 2019, the date claimed by MP and as shown beside their signatures.

The tenants also provided written statements and sworn testimony from a number of witnesses, including Witnesses RW and LD, both of whom attended the October 29, 2019 hearing and gave undisputed sworn testimony that they had overheard conversations between the tenant(s) and MP in which MP clearly agreed that the tenants would be permitted to identify non-family members to reside with them so as to help them pay for their rent. The tenants also gave undisputed sworn testimony that neither Landlord Representative BC nor the landlord gave them any indication during their first meeting with them to alert them that non-family members or other occupants would not be allowed to reside in the rental unit with the tenants.

At the December 10, 2019 hearing, Landlord Representative BC gave undisputed sworn testimony that they had tried several times to have the tenants sign a new Residential Tenancy Agreement that would remove all reference to MP from that Agreement. The parties both agreed that a revised Agreement should be signed. At the hearing, there was little disagreement as to what should be contained in that revised Agreement.

Analysis – Landlords' Application

As the tenants did not dispute the landlord's application, I allow the landlords' application for a monetary award for the $200.00 speeding ticket that the landlords will have to pay to the strata council. Since the tenants gave undisputed sworn testimony and written evidence that the landlords did not first attempt to resolve this second speeding ticket with the tenants before applying for dispute resolution, I find that the landlords could have resolved this matter without incurring the costs of their filing fee. As such, I find that the landlords are not entitled to recover their filing fee from the tenants.

Analysis – Tenants' Application

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlords or their agents have contravened the Act or their Agreement to the extent to which entitles the tenants to compensation.

Section 28 of the *Act* outlines a landlord's responsibilities to provide quiet enjoyment of premises rented to tenants:

> ***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...*

In this case, on a balance of probabilities, I am satisfied by the extensive written evidence and sworn testimony of the tenants that there has been a loss of quiet enjoyment of the premises by the tenants. I find that the tenants have demonstrated to the extent required that this loss of quiet enjoyment extended from the time that they moved into this rental unit on January 29, 2019 until March 18, 2019, when the landlord removed MP from the role of the landlords' agent with respect to this tenancy.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Some of the tenants' allegations against MP extend beyond the time period when MP was acting as the landlord's agent. I find that actions taken or attributed to MP after March 13, 2019 when they were relieved of their status as the landlord's agent are not compensable pursuant to the *Act*. If MP was harassing the tenants or otherwise invading their privacy after that date, the landlord is not responsible for their actions, having taken appropriate measures to remove MP as their agent.

In addition, anguish and stress experienced by the tenants as a result of being issued notices to end tenancy by the landlord and having to launch applications to cancel those notices do not entitle tenants to monetary awards. There is no provision for monetary awards under such circumstances. Tenants have available to them recourse to justice in the event that notices to end tenancy are issued without just cause. As noted above, the tenants have exercised those rights and have had the landlord's 1 Month Notice set aside.

At the reconvened hearing, I clarified the meaning of the tenants' Monetary Order Worksheet with the tenant. The tenant confirmed that their calculations sought a full return of the pro-rated daily rent that their $2,600.00 in monthly rent equated to for each of the days when there was any alleged contravention of their right to quiet enjoyment.

In other words, if there was a single incident on any day, the tenants sought a full rebate of their daily rent of $86.50 for that day.

In considering this matter, I have taken into account sworn testimony from MP that the previous hearing on May 13, 2019, already reduced the monthly rent for the period from February 1, 2019 to May 13, 2019 by $1,925.00, with the agreement of the parties. Rather than the $2,600.00 stated in the Agreement, the effective monthly rent for this period was reduced by $562.87 over the first 3.42 months of this tenancy ($1,925.00/ 3.42 months = $562.87). Therefore, the actual monthly rent until May 13, 2019 was set at $2,037.13 ($2,600.00 - $562.87). For the period from February 1, 2019 until March 13, 2019, when Landlord MP was removed as the landlord's agent, the tenants were responsible for paying $2,892.72 in monthly rent ($2,037.13 x 1.42 months = $2,892.72).

In their Monetary Order Worksheet, the tenants claimed a total of $4,729.00 for the five specific types of losses that they identified, separate from those categories they described as "Unquantifiable." Although the dates of these alleged occurrences do not exactly align with the period prior to March 13, 2019, when MP was removed as the landlord's agent, it is instructive to note that a monetary award of $4,729.00 for this period would result in a monthly reduction in rent of almost $1,836.28 more than the tenants actually paid the landlords in rent for the period from February 1, 2019 until March 13, 2019. During this period, the tenants lived in the rental unit and had their possessions and furnishings there, despite the level of disruption and loss of quiet enjoyment and privacy they experienced.

While I accept that the tenants are entitled to a monetary award for their loss of quiet enjoyment and privacy during the period of time when MP was the landlord's agent for this tenancy, I find that to grant the tenants the monetary award they are seeking for their loss of quiet enjoyment would be far in excess of even what they paid in rent for this period. I find that a more reasonable estimate of their loss of quiet enjoyment is to grant them a monetary award based on the percentage devaluation of their tenancy as a result of MP's frequent interference with and disruption of their right to quiet enjoyment and privacy over this initial period of this tenancy. Given the magnitude of the disruption caused by MP's visits to the property to enter their rental unit without written authorization to do so and to undertake repairs that the tenants reasonably expected to have been completed by the time their tenancy began, I find that the tenants are entitled to a monetary award of $1,446.36. This monetary award allows the tenants a 50% reduction in the rent that they were actually responsible for paying

(following the previous Arbitrator's decision) from the beginning of their tenancy until March 13, 2019 ($2,892.72 x 50% = $1,446.36).

Both parties expressed interest and a willingness to sign a properly executed Residential Tenancy Agreement that takes the place of that which identified MP as the contact person for this tenancy. I order Landlord Representative GC to prepare a Residential Tenancy Agreement for the tenants' signature and that the parties to that Agreement sign that Agreement by December 31, 2019. The new Agreement is to substitute the current agent in place of the former agent as the contact person for this tenancy. Although the newly identified agent will still need to be informed of any new person who the tenants propose to take up residence in this rental unit, the agent (and the landlord) will not unreasonably deny someone new from taking up residence within the rental unit as long as that person is not taking over the tenancy as a sublet, as long as the strata council's rules have not been contravened, and as long as the overall number of persons residing in the rental unit is not unreasonable. Consideration should be given to the remarks I made in my Interim Decision with respect to this issue.

As no pet damage deposit was collected at the beginning of this tenancy, this provision needs to be removed from the new Agreement. Since the purpose of this new Agreement is essentially to remove all reference to MP from the existing Agreement, the end date for the Agreement is to be February 29, 2020, instead of the obvious error of February 31, 2020 noted on the existing Agreement. Once the Agreement ends on February 29, 2020, the tenancy will continue as a month-to-month tenancy, unless the parties mutually choose to enter into a new one.

To give effect to the terms of the new Agreement and to ensure that this tenancy continues in an orderly fashion, I also order the tenants to conduct all written and oral communication with the landlord's assigned representative and agent, at this time, Landlord Representative BC, the corporate landlord's representative. The tenants are not to contact the landlord directly nor MP who is no longer the landlord's agent.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $1,226.36. This amount allows the tenants a monetary award for their loss of quiet enjoyment of $1,426.36, less the $200.00 monetary award issued in the landlord's favour for the speeding fine levied by the strata council. As this is a continuing tenancy, the tenants may implement this monetary award by reducing a future monthly rent payment by that

amount on a one-time basis. In the event that this is not practical, I am also attaching a monetary Order that needs to be served to the landlord(s) as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I also order Landlord Representative BC to prepare a revised Residential Tenancy Agreement for the signature of Landlord SR and/or the corporate landlord acting as the landlord's agent **and** the tenants by December 31, 2019. The revised Residential Tenancy Agreement is essentially to remove all reference to MP from the existing Agreement. This Agreement is also to include the modifications outlined above, and is to end on February 29, 2020.

I also order the tenants to conduct all written and oral communication with the landlord's assigned representative and agent, at this time, Landlord Representative BC, the corporate landlord's representative. The tenants are not to contact the landlord directly nor MP who is no longer the landlord's agent.

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: December 10, 2019

Residential Tenancy Branch