Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISHI CONSTRUCTION LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, OLC, MNDCT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on October 21, 2019, wherein the Tenant requested monetary compensation from the Landlord in the amount of $2,635.00 and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on December 6, 2019. 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant provided a copy of the residential tenancy agreement confirming that this tenancy began August 1, 2018. Initially rent was payable in the amount of $1,599.00 and was later raised to $1,635.00.

In this action the Tenant sought return of all rent paid for the last month of his tenancy (October 2019) in the amount of $1,635.00. He also sought $1,000.00 for "other damages" for what he characterized as an "unsubstantiated entry to the rental unit".

The Tenant gave notice to end his tenancy on September 25, 2019 with an effective date of October 31, 2019. The Tenant claimed that the Landlord entered the rental unit 8 times in 10 days between October 2-11, 2019 to show the unit to others after he had given notice to end his tenancy. The Tenant confirmed the Landlord sent an email with an attachment "Notice to Enter Premises" for each entry. The Tenant stated that to his knowledge the Landlord did not enter the rental unit without giving notice, however, he believed it was unreasonable for the Landlord to enter the rental unit 8 times in 10 days and to do so without given proper legal notice.

The Tenant also submitted that there was another "sequence of events" which disrupted his right to quiet enjoyment and for which he sought the sum of $1,000.00 in compensation. In this respect he testified that on October 11, 2019 the Landlord asked him to move out by October 16, 2019. The Tenant responded by email sent on October 15, 2019 confirming that he could not move out early. The Tenant stated that he then received an email on October 15, 2019 informing the Tenant that they would be showing the rental unit to prospective renters at 10:00 a.m. the next day. The Tenant responded and informed the Landlord that he would not consent to them coming at 10:00 a.m. and reminded them to comply with the *Act.* The Tenant then stated that he received another notice informing him they would be entering on October 17 and 18 between 9:00 a.m. and 5:00 p.m. The Tenant stated that on October 17 the Landlord sent an email which included an email wherein A.N. wrote: "I served a Notice just to find out his reaction, obviously I will not enter the unit". The Tenant then responded that he would like to know specific times and he would facilitate showings. The Tenant then sent a link to the Landlord regarding the Landlord entering the unit, notice for such entries, the fact that email was not proper notice.

The Tenant stated that he felt harassed by the Landlord in October of 2019, felt uncomfortable being in the building and like the Landlord was trying "to get under his skin" (based on the email sent by the building manager on October 17, 2019).

The Building Manager responded to the Tenant's submissions as follows. The Building Manager stated that he was aware that email was not an accepted form of service under the *Act* but claimed that was how they regularly communicated with this Tenant as well as all their tenants. The Building Manager stated that most of their tenants are professionals and prefer communicating by email or even text message. He noted that doing business by email with 44 units is more efficient.

The Building Manager disputed the Tenant's claim that the Landlord entered the unit 8 times in 10 days. He testified that they gave notice of entry a total of three times in October: on October 1, October 4, and October 15. He stated that in total they entered five times in October: 2 times pursuant to the October 1 notice, 3 times pursuant to the October 4 notice and none on the October 15.

In terms of the October 17 email, the Building Manager stated that he sent the email after the October 15 notice of entry. He confirmed that he did not intend to send the email to the Tenant as it was to be sent to the Landlord. He noted that due to the Tenant's reaction that they needed to provide notice pursuant to the *Act* they did not enter the unit.

The Building Manager submitted that they did not enter the unit illegally as at all times of entry the Tenant gave permission. He also submitted that they did not enter an unreasonable number of times, and certainly did not negatively impact the Tenant's right to quiet enjoyment to the extent that he should receive all the rent paid back.

The Building Manager stated that he only met the Tenant a total of three times: October 1, October 11 and finally on October 29 to do the move out inspection. He confirmed that he communicated with the Tenant on October 11 asking if they could rent it out by October 16 as the Tenant stated he intended to vacate the rental unit on October 12 (and had booked the elevator at this time). He stated there was no "confrontation" but the Tenant refused their request. He further noted that even though the Tenant had given up possession of the unit as of October 12, 2019, he resisted the Landlord's efforts to show it to others, to paint and otherwise ready the rental unit for a new tenant. The Building Manager noted that initially the Tenant agreed to do the move out inspection on the 12th but then sent an email wherein he declined the Landlord's request. The Landlord accepted his refusal and did not insist on the inspection or entering the unit to paint.

In reply the Tenant stated that he booked an elevator to move furniture out of the rental unit on October 11th. The Tenant stated that he had all his possession out on October 20th.

The Tenant stated that when the Landlord asked the Tenant to move out early there was no discussion of refunding any rent paid for October.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

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 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.

In this case, the Tenant alleged that his right to quiet enjoyment was negatively affected as a result of the Landlord entering the rental unit 8 times in a 10 day period to show the rental unit to prospective tenants. To compensate him for this, the Tenant seeks return of all the rent paid for the final month of his tenancy.

The Landlord's representative stated that they entered the unit only five times in a period of two days in early October 2019.

The parties agreed that the Landlord did not enter the rental unit without the Tenant's consent, although notice of entry was provided by email, which is not currently an accepted form of service under the *Act.*

The Landlord's representative also testified that the Tenant had vacated the rental unit by October 12; the Tenant agrees that the majority of his large items were moved by that date, but he was not moved out until the 20th. In any event, there were at least 11 days in which the Tenant was not in occupation of the rental unit.

The Tenant seeks a further $1,000.00 for "other damages" relating to the October 17 email he received from the Landlord's representative, which he interpreted to be harassing.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act,* which reads as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **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 careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28. I find that the entry to the rental unit, whether it was 8 times or 5 times, was a temporary inconvenience, and not an unreasonable disturbance, while the Landlord was actively marketing the rental unit to prospective tenants.

While email is not an accepted means of providing notice of entry, the parties agreed that at no time did the Landlord enter the unit without the Tenant's consent. When the Tenant refused entry, the Tenant's wishes were respected.

I also note that even in the event I had found the Tenant's right to quiet enjoyment was breached (which I have not) I would not have compensated the Tenant to the extent he requested. As noted, the Tenant requested return of all rent paid for the final month of his tenancy. In this case, I find that the Tenant experienced a minor inconvenience

when the unit was shown to others in the early part of October. I further find that he removed the majority of his large items by October 12 and vacated the unit by October 20, 2019 thereby giving up use of the unit 11 days prior to the end of the month. Only in rare circumstances where the tenancy has no benefit, such as when a tenant can not reside in the unit, nor store their belongings there, will a tenant be entitled to return of all rent paid.

I also find the Tenant has failed to prove he is entitled to the sum of $1,000.00 “other damages” relating to the October 17 email for what he characterized as an “unsubstantiated entry to the rental unit”. The Tenant testified that he interpreted this email as the Landlord’s attempt to “get under his skin”. I do not share this interpretation. Rather, I accept the Building Manager’s explanation that he sent a notice of entry to see if the Tenant would agree to further showings, and when the Tenant refused, they honoured his wishes.

For these reasons I dismiss the Tenant’s monetary claim in its entirety. As he has been unsuccessful, I also decline his request to recover the filing fee.

Conclusion

The Tenant’s claim 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: December 20, 2019

Residential Tenancy Branch