



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 15, 2019 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlords appeared at the hearing with the Advocate. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties confirmed the correct rental unit address which is noted on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$9,000.00 for loss of quiet enjoyment.

At the outset of the hearing, the Tenant said the \$9,000.00 sought includes aggravated damages.

Policy Guideline 16 states at page 2:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...

- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. **Aggravated damages** are rarely awarded and **must specifically be asked for in the application**.

The Tenant acknowledged the Application does not state that the Tenants are seeking aggravated damages. I told the Tenant I would consider the \$9,000.00 based on loss of quiet enjoyment but would not consider aggravated damages.

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started June 01, 2017 and was for a fixed term ending August 31, 2017. The parties agreed the tenancy then became a month-to-month tenancy. The rent was originally \$1,100.00 per month. The parties agreed rent at the end was \$1,127.50. The agreement included a one-page addendum.

The parties agreed the Tenants vacated the rental unit at the end of November 2019.

The Tenant took issue with actions of his neighbours and submitted that the Landlords did not do enough to address the situation. The main issue raised relates to security cameras the neighbours installed at the front of their residence and in the shared laundry room. The Tenant also testified about other cameras and a “dash cam”. Further, the Tenant sought \$75.00 as nominal damages for an incident where the

neighbour challenged him to fight and the Landlords' response was to try to evict the Tenants.

The Tenant testified as follows. His neighbours installed two security cameras with the Landlords' permission and used them to watch the Tenants. There was some indication the neighbours had more security cameras. The neighbours also had a "dash cam" which they used to watch the Tenants.

The Tenant testified that his neighbours moved into their residence in March of 2019. The Tenant testified about having issues with the neighbours including noise and use of the laundry room after 8:00 p.m.

The Tenant further testified as follows. The neighbours installed two security cameras. One was in the laundry room and one was in the front of the house. Nobody told the Tenants about the cameras and the Tenants were not aware of them. The Tenants later noticed the cameras after receiving strange complaints from the Landlords. The Tenant emailed the Landlords about the cameras as the neighbours were using the cameras to watch the Tenants and make complaints about them.

In relation to the laundry room camera, the Tenant testified that the laundry room is small and therefore one cannot be out of view of the camera while in the laundry room. The Tenant acknowledged that the laundry room was a shared space with the neighbours and that the camera was in plain view. The Tenant acknowledged that the camera in the laundry room did not point at their door. The Tenant submitted that the camera was a privacy breach because the neighbours were watching the Tenants. The Tenant submitted that the Tenants had every reason to believe they had privacy in the laundry room and that Tenant F.J. and their children had no idea they were being watched.

In relation to the camera at the front, the Tenant testified that it captured his parking spot and the front lawn. The Tenant said the camera was pointed towards his car. The Tenant submitted that the Tenants could not come or go without being watched. The Tenant submitted that there is a difference between people being able to see and watch you in your front yard or on the street and the camera.

The Tenant submitted that the cameras were installed for the purpose of watching the Tenants, not for security. He relied on the positioning of the cameras for this position.

In relation to the “dash cam”, the Tenant acknowledged that he could not point to evidence that the “dash cam” recorded the Tenants.

The Tenant testified that he complained to the Landlords about the cameras May 06, 2019 and provided simple solutions such as moving the front one so that it does not capture his car. The Tenant testified that the laundry room camera was moved but that the neighbours had watched the Tenants for more than a month with the camera. The Tenant testified that he asked the Landlords to find out where other cameras in the neighbours’ residence were. The Tenant said the Tenants assumed they could be recorded at any time. The Tenant referred to an email in evidence dated May 06, 2019. The Tenant testified that the Landlords did not do anything about the other cameras and that it took three months for the Landlords to respond to this issue.

I asked the Tenant why the Tenants are seeking \$9,000.00. The Tenant acknowledged this amount is hard to justify without aggravated damages. He referred to two similar RTB cases and said they were less serious but that the tenant was awarded \$3,500.00 for a breach of privacy so the Tenants should be awarded \$3,500.00 for the front camera and \$3,500.00 for the laundry room camera. The Tenant testified that the Tenants never used the back yard because they did not know when they were being recorded. The Tenant referred to the front camera watching the front yard and testified that the Tenants felt they were being watched all the time. The Tenant testified that the Tenants were watched for seven months. The Tenant submitted that it is hard to have quiet enjoyment when people are watching you.

The Tenant submitted that the Landlords showed little desire to help the Tenants with the issues raised.

The Tenant said he was relying on the *Privacy Act* and sought to make submissions on *Privacy Act* decisions as well as RTB decisions. The Tenant submitted that the RTB decisions establish that people have an expectation of privacy in common areas. The Tenant had not submitted sections of the *Privacy Act*, *Privacy Act* decisions or the RTB decisions he sought to rely on. I told the Tenant I would not consider them without them being submitted to me and provided to the Landlords.

The Tenant submitted email correspondence, photos and audios of conversations with the neighbours and Landlord.

The Landlord testified as follows. The Landlords did take the complaints about the cameras seriously. They went to the RCMP and asked if the cameras were legal or not. The Landlords would have done something about the cameras if they were not legal. It was his understanding that the laundry room camera would be illegal if it pointed into the entrance of the Tenants' unit. The Landlords tried to mediate between the Tenants and their neighbours.

In relation to the laundry room camera, the Landlord testified that the neighbours voluntarily moved it and submitted that the camera was not where the Tenant says it was. The Landlord referred to evidence submitted in this regard. The Landlord referred to a screen shot of what the camera captures submitted in evidence.

The Landlord testified that the front camera was voluntarily tilted down. He said he forwarded screen shots to the Tenant so the Tenant could see what the camera captured.

The Landlord disagreed that the neighbours were using the cameras to watch the Tenants and said he did not receive evidence from the cameras from the neighbours in relation to complaints made.

The Landlord testified that he asked the neighbours if the "dash cam" turned off when their car stopped. The Landlord testified that the neighbours confirmed it did and the Landlord emailed the Tenant about this.

The Landlord testified that he told the Tenant numerous times that there were no further cameras.

The Landlord testified that it was his understanding the Tenants and their neighbours did not get along and that an incident of them yelling at each other was not his problem.

The Landlord testified that the Landlords addressed every issue raised. The Landlord testified that he talked to the neighbours who voluntarily moved the cameras to address the complaints. The Landlord testified that a lot of emails and phone calls were made about the issues raised. The Landlord testified that he did not issue a warning letter to the neighbours because the cameras were legal.

The Landlords provided written submissions and an evidence document with emails, statements, floorplans, photos and text messages.

In reply, the Tenant testified as follows. The neighbours acknowledged watching the Tenants. The Tenant referred to a September 20, 2019 email and a reference to a statement about “keeping an eye on us”. The Tenant denied that the front camera was moved so that it did not capture his parking spot. The Tenant said the Landlords did not go to the police until after the Tenants complained about the cameras. The Tenant disputed that the Landlords attempted to deal with the situation.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim.

The Tenants relied on section 28 of the *Act* which states:

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) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

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...

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it...

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.

I note the following at the outset.

The RTB does not enforce the *Privacy Act*, it enforces the *Act*. The Tenants are not entitled to monetary compensation based on a breach of the *Privacy Act* in these proceedings. The Tenants are only entitled to compensation for breaches of the *Act*. Further, the issue here is whether the Landlords breached the *Act* as the dispute is between the Tenants and Landlords, not the Tenants and their neighbours.

The Tenant sought to rely on the *Privacy Act*, *Privacy Act* decisions and RTB decisions during the hearing. The Tenants had not submitted sections of the *Privacy Act*, *Privacy Act* decisions or RTB decisions. If parties seek to rely on legislation other than the *Act*, they must submit it and provide a copy to the other party. Further, the Tenants should have submitted *Privacy Act* decisions or RTB decisions they sought to rely on and were required to provide such decisions to the Landlords prior to the hearing. Without providing the decisions to the Landlords, there would be no way for the Landlords to know what decisions the Tenants were relying on, to have a chance to review those decisions or to make submissions on those decisions at the hearing.

I also note section 64 of the *Act* which states:

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part. (emphasis added)

In relation to the compensation sought, I find the following.

I decline to award the Tenants \$75.00 as nominal damages for a failure of the Landlords to address an incident between the Tenant and one of the neighbours. I did not find the submissions on this point particularly clear; however, I understand this to relate to the September 07, 2019 incident which was recorded. I have listened to the recording. I find both the Tenant and male neighbour acted inappropriately and said inappropriate things during this incident. I am not satisfied the Landlords were required to take some specific action in relation to this incident given both parties acted inappropriately. I decline to award the Tenants compensation for this issue.

In relation to the “dash cam”, it accords with common sense that the “dash cam” would not continue recording once the car was turned off. The Tenant could not point to evidence to support his concern that the “dash cam” recorded the Tenants. I am not

satisfied the “dash cam” did record the Tenants. I am not satisfied the presence of the “dash cam” amounted to an interference with the Tenants’ ordinary or lawful enjoyment of the premises. I am not satisfied the Landlord was required to take any steps in relation to the “dash cam” in the absence of further evidence that it was recording the Tenants. Further, the Tenant raised the “dash cam” issue in an email May 11, 2019 and the Landlord replied the same date stating that he had asked about the “dash cam” and it was off when the car was off. I find the Landlords did all that was required of them in relation to this issue.

In relation to the presence of other cameras, the Tenants have not provided compelling evidence that there were other cameras. I find the Tenant’s position on this to be based on his own interpretations and assumptions rather than on convincing evidence. I am not satisfied the neighbours had other cameras. I am not satisfied the Landlords were required to take any steps in relation to the suspicion that there were other cameras in the absence of further evidence that such cameras existed. Further, the Tenant asked the Landlord May 12, 2019 to ask what parts of the property were under surveillance and the Landlord replied May 13, 2019 stating he was not aware of any other areas under surveillance. The Landlord also sent the Tenant an email June 05, 2019 stating, “[t]o my knowledge, you have asked the upper tenants if there are other cameras installed and they did answer you, so I’m not sure why you say they are unwilling to tell.” I find the Landlords did all that was required of them in relation to this issue.

In relation to the front camera, I am not satisfied based on the evidence that it amounted to a substantial interference with the Tenants’ ordinary or lawful enjoyment of the premises. Based on the photos, I find the camera was installed above the neighbours’ front window in the immediate area of the front steps and front entrance. I accept that the camera was installed for security reasons given the location of the camera. It is not unusual for people to have a security camera aimed at their front entrance area. Based on the photos, I find the security camera was visible to anyone looking at the front entrance area. The security camera was not hidden.

Further, I am satisfied based on the photo showing the view from the camera May 14, 2019 that the camera was angled such that it did not, or barely, capture the parking spot of the Tenants. I am not satisfied otherwise based on the photos submitted by the Tenant showing the camera itself as I cannot conclude what the view of the camera is based on these photos.

Further, I do not accept that the neighbours having a security camera in their front entrance area that captures part of the front yard and some of the parking spaces is an invasion of privacy that amounts to a substantial interference with the Tenants' ordinary or lawful enjoyment of the premises. The areas captured are common areas accessible by all tenants of the property. They are not areas that the Tenants have exclusive possession over. Further, the areas are visible to anyone on or around the street in that area. I am not satisfied based on the evidence or submissions that the Tenants had anything more than a very minimal expectation of privacy in these areas.

I am not satisfied based on the evidence that the front security camera was installed to watch the Tenants. The Tenants have not submitted compelling evidence to support this position. The Tenant's position on this is based on his own interpretations and assumptions rather than convincing evidence. I acknowledge that the Tenant takes the position that the neighbours admitted to watching the Tenants. I have listened to the recorded conversations. I would characterize the Tenant as confrontational in his discussion with the female neighbour. Both the Tenant and the male neighbour acted inappropriately and said inappropriate things during their argument. I do not find comments made in these conversations to be reliable indications of the purpose of the front security camera given the relationship between the Tenants and neighbours and the nature of the conversations.

Further, I accept that the Landlord spoke to the neighbours about the front camera and was satisfied the angle was changed based on the email correspondence and photo of the camera view. I find the Landlords did all that was required of them in relation to this issue.

I do find the laundry room camera more problematic than the front camera. However, even assuming it amounted to a substantial interference with the Tenants' ordinary or lawful enjoyment of the premises, I find the Landlords took reasonable steps to correct the issue once it was raised by the Tenants. The email correspondence shows the Tenant raised the laundry room camera issue with the Landlord May 06, 2019 and the Landlord notified the Tenant May 09, 2019 that the camera had been moved. I also find from the email correspondence, in particular the May 10, 2019 email from the Tenant, that the Tenants were content with the response to this issue. I find the Landlord dealt with the issue within three days of it being raised. I find the Landlord took reasonable steps to address the issue and did so within a reasonable time after being made aware of the issue.

In the circumstances, I am not satisfied that the neighbours caused a substantial interference with the Tenants' ordinary or lawful enjoyment of the premises that the Landlord failed to take reasonable steps to address. The Tenants have failed to prove they are entitled to the compensation sought.

Given the Tenants were not successful, I decline to award them reimbursement for the filing fee.

I dismiss the Application without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 17, 2020

Residential Tenancy Branch