



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, OLC, RP, PSF, LRE, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation and for the recovery of the filing fee. The tenant also applied for a host of other remedies but withdrew this portion of the application. The reason for the withdrawal of the application for other remedies is that on January 20, 2020, the parties came to an agreement to end this tenancy effective February 29, 2020. Accordingly, these remedies are moot and hereby dismissed.

This matter was originally heard on December 16, 2019 and was adjourned due to insufficient time. In an interim decision, the parties were informed of the date, time and call in information for the hearing scheduled for this date.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was accompanied by legal counsel. The landlords represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 145 minutes of hearing time, on December 16, 2019 and this date, January 29, 2020, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to a monetary order?

Background and Evidence

The background facts are generally undisputed. The tenancy started in October 2018 for a fixed term that would end in September 2020. The monthly rent is \$3,965.00 payable on the first of each month. The rental unit is a heritage home and contains an unfinished basement.

A copy of the tenancy agreement was filed into evidence. The agreement contains two terms that are relevant to this dispute and state as follows: (reproduced as written)

- Some furnishings/books/objects will be left in the house to be detailed in addendum/photo record
- At the rear of the property there is an existing structure which the owners will from time to time require access to carry on renovation, repair, or construction. Work will be carried out within the confines of Vancouver Noise By law. Tennants will be given prior notification (min 1 week) on which dates work will be carried out

The tenant agreed that when she first viewed the property, there were several of the landlord's personal items that were stored in the basement. The tenant stated that she requested the landlord to provide her with some storage space and he moved his belongings to another part of the basement. The landlord testified that the basement is unfinished, used primarily for storage and that the tenant was informed that the landlord would be storing his possessions in the basement through the tenancy. The landlord referred to the above clause in the tenancy agreement that confirmed the arrangement that the landlord would be using the basement for storage. The landlord stated that every time he needed access to his belongings, he gave the tenant proper notice. The landlord also testified that he did not receive complaints about this arrangement until he received a letter from the tenant's lawyer on October 03, 2019.

The tenant stated that she made multiple verbal requests to the landlord through the tenancy, to remove his belongings from the basement and he did not comply with her requests. The tenant is claiming compensation in the amount of \$200.00 per month for the period of the tenancy which is now 15 months old for a total of \$3,000.00.

The tenant stated that on or about January 18, 2019, a windowpane in the upstairs bedroom broke rendering the bedroom unusable. The tenant informed the landlord in writing on February 11, 2019. The parties agreed that the window was fixed on March 04, 2019.

The landlord testified that due to the age of the home, the seasonal low temperatures prevented the replacement of the windowpane until the outside temperature rose to 5

degrees Centigrade. The landlord stated that the windowpane had to be installed from the outside while the tenant testified that it was installed from the inside of the bedroom. The tenant testified that she lost the use of the bedroom for approximately one month and is claiming \$300.00 as compensation for this loss.

The tenant testified that construction work started in the back yard in September 2019. The landlord stated that he had provided notice to the tenant in July 2019. Both parties agreed that in September 2019 an orange plastic fence was installed to close off the construction area, for the safety of the occupants of the home. The parties could not agree on the square footage of the area that was closed off. The tenant stated that she lost half the yard while the landlord stated that only a third of the yard was unavailable for the tenant's use. The parties agreed that the construction work was carried out within the timelines set by the local by laws.

The tenant is claiming compensation in the amount of \$400.00 for six months of the tenancy for a total of \$2,400.00. The tenant's amended claim indicated that the tenant was claiming \$400.00 per month for the period of September 2019 to December 2019. However during this hearing the tenant claimed an additional amount of \$800.00 for the last two months of this tenancy which is due to end on February 29, 2020.

The landlord referred to a clause in the tenancy agreement regarding the landlord's plans for renovation/construction of the existing structure located in the back yard.

The tenant stated that multiple visits by the landlord to the rental unit for the purpose of inspection, construction work and accessing his personal belongings in the basement, resulted in a loss of quiet enjoyment. The tenant added that this loss was further increased by the noise, clutter and general disturbance associated with construction activity. The tenant is claiming \$1,500.00 for loss of quiet enjoyment.

The tenant stated that the multiple visits by the landlord were disruptive. She agreed that the landlord did provide written notice to enter but added that on one occasion, she waited for him at the appropriate scheduled time and he did not attend. The tenant is claiming nominal and aggravated damages for the landlord's conduct through the tenancy which included the issuance of two eviction notices.

The tenant is claiming the following:

1.	Removal of freezer	\$125.00
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2.	Loss of use of basement	\$3,000.00
3.	Loss of use of upstairs bedroom	\$300.00
4.	Loss of use of backyard	\$1,600.00
5.	Loss of quiet enjoyment	\$1,500.00
6.	Nominal and aggravated damages	\$1,000.00
7.	Filing fee	\$100.00
	Total	\$7,625.00

Analysis

1. Removal of freezer - \$125.00

The landlord agreed to reimburse the tenant for the cost of removal of the freezer.

2. Loss of use of basement - \$3,000.00

The tenant agreed that the landlord's personal belongings were being stored in the unfinished basement, when she viewed the rental unit in October 2018, prior to entering into a tenancy agreement. I accept the landlord's testimony that he did not receive any written complaints from the tenant regarding this arrangement, prior to a letter dated October 03, 2019, from the tenant's legal counsel. And finally, a clause in the tenancy agreement confirms this arrangement.

Based on the above, I find that by signing the tenancy agreement, the tenant agreed to accept the basement as an area that would be partially used by the landlord for storage of his personal items. Accordingly, I find that the tenant did not suffer a loss of use of the basement and therefore her claim for compensation is dismissed.

3. Loss of use of the upstairs bedroom - \$300.00

Based on the testimony and documents filed into evidence, I find that due to the age of the home and from normal use of the window, the windowpane broke on or about January 18, 2019. The tenant informed the landlord of the problem in writing.

The pane was repaired about one month later. I accept the tenant's testimony that due to the seasonal low temperatures; she was unable to use the bedroom until the pane was repaired. I find that the tenant is entitled to her claim of \$300.00.

4. Loss of use of backyard - \$1,600.00

The tenant testified that the landlord started construction work on the existing structure in the backyard, in September 2019, thereby causing her to lose the use of half the

yard. The landlord stated that through the construction work, the tenant continued to have the full use of her patio and existing paths in the back yard. The landlord stated that he installed an orange plastic fence 10 feet in front of the existing structure for safety reasons and added that the work is carried out in keeping with the local by laws.

The tenancy agreement contains a clause that addresses the landlord's plans to renovate the existing structure and carry out construction in the back yard. Therefore I find that the tenant was well informed of the landlord's intentions for construction, prior to entering into the tenancy agreement.

Even though I find that the tenant entered into the tenancy agreement knowing full well that the landlord intended to carry on construction work in the back yard, I find that the tenant was inconvenienced by the noise, clutter and other disturbances which resulted in a loss of value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven that the landlord breached the tenancy agreement nor has the tenant proven negligence on the part of the landlord. However the tenant has proven that she was and continues to be inconvenienced by the construction work and did lose the use of a portion of the back yard. Therefore I find that the tenant is entitled to compensation. I find it appropriate to award the tenant nominal damages in the amount of \$500.00.

5. Loss of quiet enjoyment - \$1,500.00

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for

occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In this case, clauses in the tenancy agreement allowed the landlord to store his belongings in the basement and to carry out construction on the existing structure in the back yard. Based on the testimony of both parties, I find that the landlord complied with standards set by the local City by laws. I also find that the landlord complied with the Act by providing adequate notice prior to entering the rental unit.

Other than the understandable angst and stress which accompanies a state of disagreement, the tenant did not provide compelling evidence to support her claim of compensation for the loss of quiet enjoyment and therefore the tenant's claim for compensation in the amount of \$1,500.00, is dismissed.

6. Nominal and aggravated damages - \$1,000.00

As provided in Residential Tenancy Branch Policy Guideline 16: *Compensation for Damage or Loss*:

"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.

With regard to the tenant's monetary claim for compensation for aggravated damages in the amount of \$1,000.00, I have reviewed the submissions of both parties and I find that the relationship was stressful on both parties for different reasons. The tenant's claim is based on the conduct of the landlord with regard to multiple inspections and the issuance of two eviction notices. Based on the testimony of both parties, I find that the landlord provided adequate notice prior to his visits, did not breach the tenancy agreement, carried out construction as agreed to by the tenant and stored his belonging in the basement as also agreed to by the tenant at the start of tenancy.

Accordingly, I find that the tenant did not incur a loss with respect to property, money or services. As stated above, other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for aggravated damages and therefore the tenant's claim for compensation in the amount of \$1,000.00 is dismissed.

7. Filing fee - \$100

The tenant has proven a portion of her claim and therefore I award the tenant the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Removal of freezer	\$125.00
3.	Loss of use of upstairs bedroom	\$300.00
4.	Loss of use of backyard	\$500.00
7.	Filing fee	\$100.00
	Total	\$1,025.00

Overall the tenant has established a claim of \$1,025.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$1,025.00

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: February 05, 2020

Residential Tenancy Branch