



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MASHINCHI INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Tenant stated that on October 28, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in October of 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 25, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, sometime near the end of February. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 28, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that this evidence was served to the Landlord, via registered mail, sometime in February. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord and the Agent for the Tenant each affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Is the Tenant entitled to a rent refund because the Tenant was unable to occupy the unit for a period of time?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on December 15, 2015;
- the tenancy was for a fixed term, the fixed term of which ended on December 31, 2019;
- rent of \$6,200.00 was due by the first day of each month; and
- the tenancy ended, by mutual consent, on July 15, 2018.

The Agent for the Tenant stated that on October 08, 2017 bullets were fired into the house from a passing vehicle. He stated that on that evening he had approximately 40-50 guests in the house. He stated that windows were broken by the bullets and the bullets struck some water lines, which resulted in significant water damage to the unit.

The Tenant contends that the rental unit was uninhabitable from October 08, 2017 and March 04, 2018 due to damage caused by the bullets. The Agent for the Tenant stated that he did not, and could not, live in the rental unit between October 08, 2017 and March 04, 2018, while the rental unit was being dried and repaired.

The Landlord stated that the Tenant could have resided in the unit during a portion of that period. In his written submission the Landlord acknowledged that the rental unit was uninhabitable between October 10, 2017 and January 12, 2018.

The Tenant is seeking compensation, in the amount of \$20,315.80, for rent paid between November 14, 2017 and March 04, 2018. There is no dispute that the Tenant paid rent for this period. The Tenant has not claimed compensation for the period between October 08, 2017 and November 14, 2017, even though the Tenant submits the unit was uninhabitable during that period.

The Landlord stated that he went to the rental unit on October 20, 2017 and he did not notice any water damage, although he was subsequently advised by his management company that water damage had occurred.

The Landlord and the Tenant agree that the property management company made the initial arrangements with the restoration company. The Agent for the Tenant stated that the restoration company started the restoration process on October 09, 2019 or October 10, 2019. The Agent for the Tenant stated that he communicated with both his and the Landlord's insurance company regarding the repairs.

The Landlord stated that the police and the insurance company have both concluded that the Tenant was operating a short-term rental service on the property. He stated that the unit was rented on a short-term basis to "random people" and he does not know if the "random people" were the target of the shooting.

The Agent for the Tenant stated that he never rented the unit to other people on a short-term basis and he was in the house at the time of the shooting.

The Landlord stated that his insurance company would not pay for the costs of repairs, as it was determined that the rental unit had been rented to others on a short term basis. He stated that he does not know who paid for the repairs to the unit.

The Agent for the Tenant stated that he personally paid approximately \$60,000.00 to repair the rental unit "in good faith". He stated that he paid for the repairs, not because the incident was his fault, but because he wanted the repairs to be done as soon as possible.

Legal Counsel for the Tenant submitted that:

- the rental unit could not be occupied between October 08, 2017 and March 04, 2018, in part, because there were broken windows;
- the rental unit could not be occupied between October 08, 2017 and March 04, 2018, in part, because there was water damage;
- the rental unit could not be occupied between October 08, 2017 and March 04, 2018, in part, because of the noise associated to drying and repairing the unit;
- the rental unit could not be occupied between October 08, 2017 and March 04, 2018, in part, because the Tenant feared another shooting might occur;
- the Tenant was not the intended target;
- the Tenant does not know who the intended target was;

- no evidence was submitted to show that the shooting was the Tenant's fault; and
- no evidence was submitted to show the rental unit had been rented to others on a short term basis.

The Tenant submitted a letter from a lawyer to the Landlord, dated March 02, 2018, in which legal counsel declared, in part:

- the Tenant previously offered to "pay for the Landlord's short term rental insurance policy so that the Premises and all parties would be protected";
- that approximately \$65,000.00 in damages arising from the shooting incident "fell to our client to remedy"; and
- that the rental unit was not suitable for occupation between October 10, 2017 and January 12, 2018.

The Tenant submitted photographs of various areas under repair in the rental unit.

The Tenant submitted a document from the restoration company, which details the need for significant repairs.

The Landlord submitted a letter from the local police department, dated October 10 2017, in which he is advised that the rental unit may become the subject of forfeiture; that he should ensure there is no unlawful activity occurring on the property; and that he should safeguard the property "against persons who have a history of criminal activity who might reside, rent, visit or frequent the property for an unlawful purpose".

Analysis:

When making a claim under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. This Application for Dispute Resolution was filed by the Tenant and the Tenant bears the burden of proving the Tenant is entitled to a rent refund.

On the basis of the undisputed evidence I find that an unidentified party(s) fired bullets into the home from the street on October 08, 2017, which resulted in significant damage to the rental unit.

On the basis of the testimony of the Agent for the Tenant and the written submission of the Landlord, I find that the rental unit was uninhabitable between October 10, 2017 and January 12, 2018, as a result of this incident that occurred on October 08, 2017.

On the basis of the testimony of the Agent for the Tenant, I find that the rental unit was also uninhabitable between October 08, 2017 and October 10, 2017. Although the Landlord does not acknowledge the unit was uninhabitable on these two dates in his written submission, it is logical to conclude that it was not habitable on those dates, since the incident that rendered the unit uninhabitable occurred on October 08, 2017.

As the Tenant is not seeking compensation for rent paid for the period between October 08, 2017 and November 14, 2017, I do not need to consider that period of time.

I find that the Tenant has submitted insufficient evidence to establish that the rental unit was uninhabitable between January 13, 2018 and March 04, 2018. In reaching this conclusion I was heavily influenced by the absence of evidence, such as documents from the restoration company, that show the unit was still in state of disrepair after January 12, 2018. In reaching this conclusion I was further influenced by the Landlord's submission that the rental unit was habitable after January 12, 2018.

In determining that there is insufficient evidence to convince me that the unit was uninhabitable between January 13, 2018 and March 04, 2018, I have placed no weight on the Tenant's submission that the rental unit could not be occupied between October 08, 2017 and March 04, 2018, in part, because the Tenant feared another shooting might occur. I accept that it may have been prudent to avoid staying in the rental unit for a period of time after the shooting for fear of a reoccurrence. I find, however, that it would be unreasonable to extend that prudence past January 13, 2018 given that no further incidents occurred between October 08, 2017 and January 13, 2018, which is over three months.

As the Tenant has submitted insufficient evidence to convince me that the unit was uninhabitable between January 13, 2018 and March 04, 2018, I dismiss the Tenant's application for a rent refund for that period.

I must now consider whether the Tenant is entitled to a rent refund for the period between November 15, 2017 and January 12, 2018.

I find that there is insufficient evidence to conclude that the Tenant, or a guest of the Tenant, was the intended target of the shooting that occurred on October 08, 2017. Similarly, I find there is insufficient evidence to conclude that the shooting occurred as a result of the criminal actions of the Tenant or a guest of the Tenant. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as a police report, that supports these conclusions.

In adjudicating this matter, I have placed no weight on the undisputed evidence that the Tenant paid for the repairs that were required as a result of the shooting. Although it is tempting to draw a negative inference from these actions, I have not done so as there is simply no evidence to support a finding that the shooting occurred as a result of the criminal actions of the Tenant or a guest of the Tenant.

In adjudicating this matter, I have placed no weight on the letter submitted in evidence by the Landlord, dated October 10 2017, in which local police department advised him that the rental unit may become the subject of forfeiture; that he should ensure there is no unlawful activity occurring on the property; and that he should safeguard the property “against persons who have a history of criminal activity who might reside, rent, visit or frequent the property for an unlawful purpose”. Although this letter suggests that the police suspect the rental unit is associated to criminal activity, there is no evidence that establishes the police have confirmed those suspicions.

In adjudicating this matter, I have placed no weight on the Landlord’s submission that the unit was rented on a short-term basis to “random people”. Even if I accepted that the Tenant did occasionally rent the unit to others on a short-term basis, I cannot conclude that this business venture was related to the shooting that occurred on October 08, 2017. The undisputed evidence is that the Tenant was occupying the home at the time of the shooting, which suggests that the shooting was not related to a short-term rental.

In adjudicating this matter, I have placed no weight on the Landlord’s submission that his insurance company would not pay for the costs of repairs because it was determined that the rental unit had been rented to others on a short term basis. I find that this submission is not relevant to the issues in dispute at these proceedings, as the Landlord is not seeking compensation for the cost of repairs.

Section 32(3) of the *Act* requires tenants to repair damage to a rental unit that is caused by the actions or neglect of the tenant or a guest of the tenant. As there is insufficient evidence to conclude that the Tenant or a guest of the Tenant was the target of the shooting that occurred on October 08, 2017 or that the shooting occurred as a result of the criminal actions of the Tenant or a guest of the Tenant, I cannot conclude that the Tenant was obligated to repair the damage that occurred as a result of the shooting.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. In circumstances where a tenant is not found liable for repairs, a landlord must repair the unit in accordance with section 32(1) of the *Act*, even if the rental unit was damaged for reasons beyond the landlord's control, such as lightening.

As I am unable to conclude that the Tenant is required to repair the damage to the rental unit caused by the shooting, I find that the obligation to make the repairs rests with the Landlord, pursuant to section 32(1) of the *Act*.

Section 28 of the *Act* grants tenants the right to the quiet enjoyment of their rental unit including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with legislation; and use of common areas for reasonable and lawful purposes, free from significant interference. Residential Tenancy Branch Policy Guideline #6, with which I concur, stipulates that a tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I find that the extensive repairs required at the rental unit after the shooting on October 08, 2017 breached the Tenant's right to the quiet enjoyment of the rental unit, as the Tenant was not able to reside in the rental unit for a significant period of time.

In determining the amount by which the value of the tenancy has been reduced as a result of a breach of the right to quiet enjoyment, Residential Tenancy Branch Guideline #6 suggests that I consider 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. The guideline further suggest that a tenant may be entitled to compensation for loss of use of a portion of the property even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In these circumstances, I find that the breach of the right to quiet enjoyment has been significant, as the Tenant was unable to live in the rental unit for an extended period of time. As the breach to the right of quiet enjoyment has been significant, I find that the

Tenant is entitled to compensation in the amount of 75% of the monthly rent for the period between November 15, 2017 and January 12, 2018.

I have not granted the Tenant a rent reduction of 100%, as has been claimed, as I find that the Tenant continued to enjoy some benefits of the rental unit. The Tenant retained the right to access the unit and to occupy areas of the unit, even if only for the purpose of storing personal property.

I find that the Tenant is entitled to compensation for 59 days in the period between November 15, 2017 and January 12, 2018. I have calculated the daily rent at this unit to be \$208.99 ($\$6,200.00 \times 12 = \$74,400.00$ divided by 356 = \$208.99). As I have granted the Tenant compensation in the amount of 75%, I find that the Tenant is entitled to daily compensation of \$156.74 for 59 days, which is \$9,247.66.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$9,347.66, which includes compensation for loss of quiet enjoyment, in the amount of \$9,247.66, and \$100.00 for the fee paid to file this Application for Dispute Resolution.

I grant the Tenant a monetary Order for \$9,347.66. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: March 19, 2020

Residential Tenancy Branch