



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

On February 1, 2020, the Tenant made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with D.B. attending as a witness for the Tenant. B.B. and B.V. attended the hearing as agents for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on or around February 10, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed evidence, as this package was served accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package.

B.B. advised that the Landlord’s evidence was served to the Tenant by being posted to her door on March 2, 2020. The Tenant initially advised that this was posted to her door on March 2, 2020; however, she then changed her answer and said she found this evidence in the dirt on March 7, 2020. She stated that she had no further submissions nor did she take any other issues with service of this evidence. While there may be a discrepancy regarding how and when this evidence was served, as the evidence was received in accordance with the time frame requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord’s evidence will be accepted and considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2013 and that the Tenant's portion of the subsidized rent was established in the amount of \$303.00 per month, due on the first day of each month. A security deposit of \$506.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant referenced Section 28 of the *Act* with respect to her right to quiet enjoyment and provided a brief, vague outline of the issue at hand regarding intimidation, harassment, and damage to her property. She referenced seven letters submitted as documentary evidence to support her position that there have been problems since July 2019. She stated that there were incidents of yelling, swearing, and a fire that was started, that there were issues of trespassing, and that the police had been called due to escalating problems.

While the Tenant advised that she has had issues with tenants in three other units in the residential complex, she finally was able to explain that the basis of her Application was primarily due to the children of one particular unit. She stated that these children scream at all hours of the day, they have trespassed on her deck, they harass her and her children, and they have damaged her property. She made an indirect comment about an alleged sexual assault that one of these children committed on another child of the residential property. She stated that the police have been called many times but were unable to act as this was a residential tenancy issue. Regarding the alleged sexual assault, they were unable to do anything as the accused child was underage. She attempted to reason with the parents of these children; however, she is concerned for

the safety of her family. Despite her complaints to the Landlord about these issues, the Landlord has failed to remedy the situation. Apart from the complaint letters submitted as documentary evidence, she did not submit any other evidence to support her claims. She also advised that she received a warning letter from the Landlord due to the Landlord's suspicion that her issues with the alleged problematic family were racially based.

B.B. advised that the Landlord made many attempts to investigate the Tenant's allegations and called other tenants of the property for confirmation. A Housing Intervention Worker was brought in to investigate and it was discovered that some of the allegations were not true. However, the Landlord enlisted the services of a translator to talk to the parents of the problematic children, to review the tenancy agreement and rules with them, and to explain what is and is not acceptable. She stated that the previous Tenant Services Coordinator had attempted to contact the Tenant to confirm the allegations and had attempted to encourage a more tenable, neighbourly relationship.

B.V. stated that investigating allegations and moving forward on appropriate solutions takes time.

The Tenant read from a statement from another tenant of the residential property, which echoed much of what the Tenant expressed. This tenant outlined her frustration with the lack of action from the Landlord to take any action with respect to the behaviour of these specific children. She stated that her own children were afraid to go outside as the accused children would chase them with sticks and threatened to kill them. The accused children had physically assaulted other children, had strewn broken glass around the property, had hurled profanities at others, had thrown rocks at passing vehicles, had let air out of vehicle tires, had set a fire, and had committed "sexual acts" in a dumpster. With respect to the alleged sexual act, the police could not proceed on this complaint as the accused child was underage.

B.B. advised that all of the accusations were not true and that as part of the Landlord's investigation, it was determined that some of the accusations stem from racism and unfair targeting of the accused tenants and their children, as they are from another country. She speculated that the police did not take any action as there was insufficient evidence to warrant further investigation. She stated that the Landlord has attempted to discuss the situation with the accused children and have been told that they get equally harassed by other children of the property. She stated that the Landlord has addressed noise issues in common areas with all the children, but she acknowledged that the

accused children sometimes play outside until 10:00 PM and they can be loud. She stated that there has only been a complaint of allegation of damage to the Tenant's car, and no evidence has been provided to support that the accused children were responsible for this damage.

B.V. advised that if the Tenant's vehicle had been damaged by the accused children, she should seek remedy through her insurance company. In addition, he stated that the concerns pertaining to any alleged sexual acts committed by the accused children should be addressed to the ministry and not the Landlord.

The Tenant stated that D.B. had witnessed one of the accused children hit the Tenant's car with a stick and that child was brought to her door to apologize. She stated that she provided the Landlord with evidence that supports her allegations, but she did not submit this evidence for consideration on this file. She advised that she is frustrated with a lack of resolution on the Landlord's part.

D.B. advised that she has witnessed the accused children throw objects at passing cars, that her own children have been assaulted, that a chair was stolen and thrown into a bush, that these children use profanity and vulgar language, that the noise they make is beyond children simply playing, and that when warned, these children simply act out more. She stated that these children are hyper-sexualized and she has heard them make "sex noises" in the dumpster. She advised that the police have been informed and an investigation is in progress. She submitted that the parents of these children are often screaming "blood-curdling" screams at their own children. She stated that she attempted to talk to the father of these children through a translator app on her phone; however, this did not remedy any of the issues. As a result of all the problems, her children do not leave her rental unit anymore.

B.B. stated that the Landlord has only received complaint letters from the Tenant, so they are not aware of any other issues. The Landlord attempted to solve the problems by moving the accused tenants to another rental unit; however, this family declined this offer.

B.V. advised that "to his knowledge", the Landlord was not aware of D.B.'s complaints. He stated that the Housing Intervention Worker may have been aware of more of the intimate details of the allegations, but due to "client privilege" the specifics of any allegations were not brought to the Landlord's attention. He stated that "kids will be kids", that there is blame to be assigned to both parties, and that the Housing

Intervention Worker believes that this issue stems from unfair targeting of the accused tenants.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that a Tenant is entitled to reasonable privacy and freedom from unreasonable disturbance.

Regarding the Tenant's complaints about unreasonable disturbances mostly from the children of a neighbouring unit, I find it important to note that it should be expected when sharing a common space with others, that a reasonable level of noise with everyday living is normal. However, I have before me numerous complaints from the Tenant of alleged excessive noise or inappropriate behaviours caused by the neighbours' children and that this has been ongoing for a number of months. In addition, I have documentary evidence and testimony from D.B. that somewhat supports the Tenant's claims.

The agents for the Landlord submitted that they have investigated the allegations and determined that some of the allegations are either unproven or due to personality differences between the parties. I find that the latter assessment is somewhat supported by the warning letter dated March 4, 2020 issued to the Tenant due to her behaviour and actions. I find that this partially detracts from the reliability of the Tenant's testimony with respect to the accuracy of all the allegations. However, the agents for the Landlord did acknowledge vaguely that the accused tenants' children have been found to have engaged in some inappropriate actions and behaviours, but they did not specifically stipulate what those were. Consequently, while I question the entirety of the Tenant's claims, I am satisfied on a balance of probabilities that there was more likely than not ongoing issues caused by the accused tenants' children that were unreasonable and excessive.

With respect to the Tenant's request for an Order that the Landlord comply with the *Act*, I find it important to note that the agents for the Landlord advised that they took steps to investigate the accusations and have found fault on both sides. If there is an ongoing issue, the onus is on the Landlord to determine if a tenant is breaching the *Act*, and if

the breaches continue after written warning, then the Landlord should take the appropriate action to deal with the issues, which could include potentially ending the tenancy of a problematic tenant. Given that there is evidence that the accused tenants have breached the *Act* by reducing the covenant of quiet enjoyment for at least one other tenant, and given that there is evidence that the Landlord has warned the Tenant about her own behaviour, I find that in managing the differences in the residential property, the Landlord may have different options when determining how to best proceed in handling this situation moving forward. As a result, I Order that the Landlord take corrective action immediately to investigate the situation and to provide a remedy to the differences that are occurring between the rental units. However, given the nature of the current climate, I urge the Landlord to work with the parties involved to effectively bridge this gap and settle these differences in an effort to promote a successful community.

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover \$50.00 from the \$100.00 filing fee paid for this application. The Tenant is permitted to withhold this \$50.00 from a future month's rent.

Conclusion

The Landlord is Ordered to take corrective action immediately to investigate the nature of the Tenant's claims for loss of quiet enjoyment, and to provide an effective remedy to this situation.

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 18, 2020

Residential Tenancy Branch