Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, CNQ, OLC, MNDCT, RP, RR, LRE, PSF, DRI

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 of the *Act;*
- cancellation of the landlord's 2 Month Notice to End Tenancy for landlord's use pursuant to section 49 of the *Act;*
- disputing a rent increase pursuant to section 41 of the *Act*;
- setting limits on the landlord's ability to enter the unit pursuant to section 29 of the *Act*;
- an Order for the landlord to repair the property pursuant to section 32 of the *Act*;
- an Order for the landlord to comply with section 62 of the *Act*;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- and
- a return of the filing fee pursuant to section 72.

Both the landlord and the tenant appeared at the hearing. The landlord was joined by her daughter S.S., while the tenant called D.M. to testify as a witness. All parties who present were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other's evidentiary packages, and the landlord confirmed receipt of the tenant's application for dispute resolution. The landlord explained that she was served with the tenant's evidence in two separate packages but conceded that she had adequate time to review all documentary evidence. I find that all parties were sufficiently served in accordance with sections 88 & 89 of the *Act.*

Preliminary Issue #1 – 10 Day & 1 Month Notices to End Tenancy

The landlord conceded at the outset of the hearing that the 10 Day Notice to End Tenancy dated April 7, 2020 was invalid. The 10 Day Notice presently in dispute is therefore cancelled and of no force or effect. Similarly, both parties acknowledged that no 1 Month Notice to End Tenancy had been issued. The tenant conceded that she had applied to dispute a 1 Month Notice in error and that no such notice had been issued to her.

Preliminary Issue #2 – Tenant's application for the Landlord to comply with the *Act*

The landlord agreed that all future correspondence with the tenant shall be done in writing. The landlord agreed to place the written correspondence on the front door of the rental unit.

Section 29 of the *Act* states as follows:

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;
(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

or

(f)an emergency exists and the entry is necessary to protect life or property.

Preliminary Issue #3 – Tenant's application disputing an additional rent increase

The tenant acknowledged that the rent had not been increased and stated she wished to withdraw this portion of her application.

Settlement Agreement – 2 Month Notice to End Tenancy and $48.00 in future rent

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The landlord agreed to withdraw the 2 Month Notice to End Tenancy dated June 25, 2020.

2. The parties mutually agreed to end the tenancy on October 31, 2020.

3. The landlord agreed that the tenant may withhold $48.00 from a future rent payment on **one** occasion.

These particulars comprise the full and final settlement of the 2 Month Notice presently in dispute. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of the dispute regarding the 2 Month Notice.

Issue(s) to be Decided

Is the tenant entitled to a monetary award, including a return of the filing fee?

Background and Evidence

This tenancy began in March 2019. Rent is $1,100.00 per month and a security deposit of $550.00 paid at the outset of the tenancy was surrendered by the tenant to the landlord in the Spring of 2020 in lieu of rent for April 2020.

The tenant is seeking a monetary award of $3,000.00. While the tenant originally applied for an award of $3,048.00, the landlord, as noted above agreed to allow the tenant to withhold $48.00 from a future rent payment in full satisfaction for a portion of the tenant's monetary claim.

The tenant said the amount of $3,000.00 represented a loss of quiet enjoyment that had stemmed from the landlord's alleged failure to address several complaints relating to issues with the rental unit. Specifically, the tenant cited a faulty fridge, a water shut off, problems with the heating and washer/dryer and issues regarding the responsibilities

surrounding snow shoveling. The tenant requested a return of $200.00 per month for 17 months. I note this amount would equal $3,400.00, however, based on the application presently before me, I will only consider the $3,000.00 as requested in the application served on the landlord.

D.M., the tenant's son was called as a witness during the proceeding. D.M. highlighted noise which emanated from the fridge when he visited the rental unit. He described this noise as a "knuckling" sound that occurred frequently. The tenant said this noise was ongoing and frequently disruptive to her quiet enjoyment. As noted previously, in addition to this noise as described by D.M. the tenant cited a water and heat shut off in the rental unit, a leaky faucet and issues with the roof gutters and expectations around snow removal as reasons for her application for a monetary award. In further support of her claim, the tenant referenced a letter from a naturopath which she argued evidenced her stress and anxiety surrounding her relationship with the landlord.

The landlord disputed all aspects of the tenant's application for a monetary award. The landlord argued that she had never previously had reports related to a faulty fridge and maintained that all steps had been taken to address issues concerning a leaky faucet. Further, the landlord explained that she was made aware of the water shut off but noted this was required due to repairs. Additionally, the landlord provided written submissions detailing the steps taken to fix the gutters, another source of frustration between the parties.

The landlord acknowledged that the tenant had performed some snow removal duties, but she maintained it was part of the tenancy agreement discussions which had resulted from negotiations between the parties at the outset of the tenancy. Finally, the landlord addressed the issue of heating in the unit. She explained that heating was part of an automatic process that was controlled by the outside temperature. The landlord said she had not ever purposefully shut off the heat but rather explained shut off occurred as a result of the way in which the system was designed.

Analysis – Monetary Application

The tenant is seeking a monetary award of $3,000.00 for loss of quiet enjoyment associated with her experiences while in possession of the rental unit. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. As per the direction provided by Policy

Guideline #16, the claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

After considering the testimony presented by both parties and having reviewed all evidence submitted, I find the tenant has failed to prove her claim as detailed in her application. While I found the tenant and her witness to be credible, the description of loss of quiet enjoyment is not consistent with its application under our Guidelines.

Policy Guideline #6 examines a basis for a finding of breach of quiet enjoyment. It notes as follows:

> 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.
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> 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. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
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> 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.

While I considered the testimony of the tenant and her witness regarding the noise associated with the refrigerator, I note that the tenant's claim was not based solely on the problems with the appliance. I find that this disturbance along with the others described did not result from a landlord's failure to take reasonable steps to correct them nor from her direct actions in relation to the rental unit. After reviewing the evidence and considering the testimony it is evident that the parties have a strained relationship that had resulted in a breakdown in communication.

I place little weight on the letter submitted by the tenant signed by M.M. I find this letter offers no diagnosis or professional opinion, but rather focuses on the tenant's own description of events. While I do not dispute that the tenant's relationship with the landlord is acrimonious, I find that no evidence that efforts were made by the landlord to purposefully disturb the tenant. I find the landlord made reasonable efforts to address the tenant's complaints and find the issues related to heat, drainage and water to have been both acknowledged and attended to. For these reasons I decline to award the tenant compensation as requested.

As the parties reached a settlement agreement, the tenant must bear the cost of the filing fee.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, which is to take effect by 1:00 P.M. on October 31, 2020. The landlord is provided with this Order in the above terms and the tenant must be served with this Order if the tenant does not abide by condition #2 of the above settlement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant may withhold $48.00 from a future rent payment on **one** occasion.

The landlord is ordered to provide all notice of entry to the unit as directed by section 29 of the *Act* (as described on page 3 of the decision).

The 10 Day Notice to End Tenancy dated April 7, 2020 is withdrawn and is of no force or effect.

The tenant's application for a monetary award is dismissed without leave to reapply.

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: July 23, 2020

Residential Tenancy Branch