



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group Canada
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Landlord Representative KS (the landlord) confirmed that on September 3, 2020, they received a copy of the tenants' dispute resolution hearing package and written evidence sent by the tenants by registered mail on September 1, 2020, I find that the landlord was duly served with these materials in accordance with sections 88 89 of the *Act*. The landlord did not provide any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a retroactive rent reduction arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On October 17, 2016, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that initially ran from November 1, 2016 until April 30, 2017. The tenancy was for a third floor rental unit in a three storey building with a total

of 45 rental units. At the expiration of the initial term, the tenancy continued as a month-to-month tenancy. Initial monthly rent was set at \$1,460.00, payable on the first of each month. By the end of this tenancy, the monthly rent had increased to \$1,547.00. Although the tenants paid a \$712.50 security deposit, the landlord gave undisputed sworn testimony that they have returned the tenants' security deposit to the tenants.

On August 26, 2020, the tenants gave the landlord their notice to end this tenancy by September 30, 2020. The parties agreed that the tenants vacated the rental unit by September 30, and paid all of their rent during their tenancy.

Although the tenants applied for a monetary award of \$4,641.00, their written evidence identified a request for a monetary award of \$5,391.00. This amount included a request for the recovery of one-half of their monthly rent for the last six months of their tenancy, from April 1, 2020 until September 30, 2020, plus an estimate of \$750.00 for moving expenses. Since they were paying \$1,547.00 in monthly rent for their last six months, they requested a retroactive rent reduction of \$773.50 for each of the last six months of their tenancy. At the hearing, I noted that without an amendment of their original application, I could only consider their application for a monetary award totalling \$4,641.00, plus the recovery of their filing fee.

The tenants requested the above monetary award for the loss of quiet enjoyment they experienced during their tenancy as a result of the landlord's alleged failure to enforce the no smoking provisions in their building and for their lack of intervention regarding their dispute with the tenant who lived below them during their tenancy. They maintained that they have been asking the landlord to take action against the tenant who lived below them since shortly after they moved into this rental unit. They provided copies of many emails requesting action by the landlord. They claimed that the person who lived below them routinely smoked on their second storey balcony and that smoke from that rental unit entered the tenants' rental unit on a frequent basis.

Whenever the tenants raised concerns with either the building manager or later, the landlord, they were asked to produce some sort of proof in the form of photos/videos/letters of complaint from other tenants. Tenant RL said that it is not the responsibility of tenants to act as "investigative journalists" to assemble information to be used by the landlord in enforcing building rules with tenants. The tenants also maintained that the landlord's representatives told them they required a formal letter of complaint, which the landlords needed in order to commence action that would lead to the eviction of the tenant below them if proof was available to demonstrate that the tenant in the rental unit below them was contravening the no smoking rules for this

building and property. Tenant AM (the tenant) provided sworn testimony and written evidence that they were not willing to take actions that would lead to the eviction of anyone; they simply wanted the landlord to take action to eliminate smoke from entering their rental unit from the rental unit below them. Both parties agreed that this was a no smoking/no vaping building, and that the landlord had posted reminders in public areas of the building to that effect.

An additional reason for the tenants' application for this monetary award was the alleged harassment that they maintained was directed at them by the resident of the rental unit below them once it became apparent that they were complaining about that tenant's smoking. At the hearing, the tenant described an incident that happened on August 10, 2020, when the tenant in the rental unit below them threatened them from their balcony with violence when the tenants attempted to obtain some form of photographic or video evidence of that tenant's smoking. The tenant said that they contacted the police about this threat of violence and were advised that the threat could only escalate if the police were to approach the tenant who threatened them about this matter. The tenant said that the attending police officer observed that the landlord had not been taking adequate action to mediate this dispute with the other tenant. They said that the police officer also suggested that they involve the Residential Tenancy Branch in this matter. As any interaction with the tenant below them continued to cause stress for the tenants and the tenants were worried about their safety, they decided to end their tenancy by sending the landlord a notice on August 26, 2020 that they would be ending their tenancy by the end of September 2020.

The landlord gave sworn testimony that their representative, the building manager, had tried their best to address the tenants' concerns about smoke entering the tenants' rental unit. In this instance, the landlord said that the tenant living below the tenants' rental unit was adamant on every occasion that the landlord's building manager approached them that they were not smoking in the rental unit or on their balcony. The landlord noted that no one else in this building had raised any complaints that the tenant living below the tenants' rental had been smoking on the property. The landlord said that unless they receive some form of proof that they can follow up on that they cannot take action against a tenant in this no smoking property with respect to their contravention of the no smoking rules. They said that if they acted without a reasonable level of evidence against the tenant living below the tenants' rental unit that it would be unfair to the other tenant.

The landlord and their building manager gave sworn testimony that even without any photographic or video evidence, or even a formal letter of complaint from the tenants,

they did approach other tenants in this rental building to determine if they had similar concerns about the no smoking rules being contravened by the tenant living below the tenants. Although they were remiss in entering copies of their written evidence for this hearing, they said that they had received three letters from other tenants whose rental units were near the tenant the Applicants identified as responsible for the smoking problem. They said that each of these letters said that they had not noticed any problems with smoke entering their rental units. The building manager identified the authors of these letters by their rental unit, and added that they had spoken to residents in four other rental units, who also told the building manager that they had not detected any problem with the tenant in the rental unit below the tenants' rental unit smoking either inside the rental unit or on their balcony. The tenant's emails confirm that they were advised by the building manager that the building manager had made these enquiries, and that without some form of photographic or video evidence, they would be unable to pursue any further action with the tenant living below the tenants.

The building manager, who also resides in this complex, said that depending on the wind direction smoke enters these buildings from beyond the property boundaries.

Tenant RL maintained that the people who the building manager interviewed were friends of the tenant who lives below their formal rental unit. Tenant RL maintained that these residents were also smokers and smoked with the tenant living below them. The building manager responded that one of the people who provided a written statement is "a very casual smoker" and that the only frequent smoker in this building, other than the tenant who lived below the tenants, is someone who lives on the main floor on the other side of the building.

The building manager said that the tenant living below the tenants' rental unit informed them that the police have never interviewed them about any issues regarding harassment of the tenants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that 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. 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. In this case, as

mentioned at the hearing, the onus is on the tenants to prove on the balance of probabilities that the landlord has contravened the Agreement or the *Act*.

In their application, the tenants asserted that they were entitled to a monetary award for their loss of quiet enjoyment of their rental unit during the final six months of their tenancy. In this regard, section 28 of the *Act* reads in part as follows:

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;...

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” Section 65 of the *Act* reads in part as follows:

65 *(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;..

While the tenants have found the actions of the tenant who resided below them upsetting and stressful, these unsatisfactory interactions with the tenant living below them are not necessarily subject to intervention by the landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. If that becomes necessary, landlords require some basis for taking action, beyond reports from the complaining tenant or set of tenants.

In considering this matter, I should first note that it certainly would have been helpful had the landlord entered into written evidence copies of the letters they claim to have received from other tenants in this building to demonstrate the extent to which they did follow up on the tenants' multiple emails. Despite their failure to provide copies of these letters, the landlord and the building manager did provide detailed sworn testimony regarding the measures they had taken to follow up on the tenants' emails requesting action to stop the tenant living below them from generating tobacco smoke from entering the tenants' suite.

The tenant's April 29, 2020 email advised the landlord's building manager that they did not want to lodge formal written complaints as they did not want anyone to get evicted over these issues. I also note that the tenant's July 1, 2020 email to the landlord's building manager stated that "I was accepting your response that nothing more can be done." Once the tenants realized that they would have to provide some form of evidence that the tenant was smoking on their balcony below them, interaction with the other tenant deteriorated to the extent that the tenants felt compelled to approach the police for assistance.

In the following portion of their notice to end this tenancy, the tenants included a request that they be allowed to refrain from paying monthly rent for September 2020,

...I have been told by the (police) that I should pursue actions against and compensation from (the landlord) for their lack of assistance/resolution options via the Residential Tenancy Branch. I would prefer to leave this stressful situation behind me once I vacate this property. In order to ensure this I am requesting from (the landlord) that instead of legal proceedings, you instead waive rent for us for the month of September and that you refund us our damage/keys deposit in full as compensation for the ongoing loss of quiet enjoyment of our rental suite which has been exasperated as a result of (the landlord's) lack of response and provision of access to dispute resolution processes/options...

Due to the situation I hope you accept my above terms/request for compensation, if so then I will immediately cease with any proceedings I had planned via the Residential Tenancy Branch...

(as in original but for anonymization of names of landlord and the police department)

I find that the landlord's representatives described an appropriate process that they followed in attempting to address the tenants' dispute with the neighbour who lived

below them in this rental property. I see insufficient evidence to demonstrate that the landlords have failed to take appropriate action to follow up on the tenants' concerns about the tenant who lived below them. Other than the tenants' emails and sworn testimony, the tenants provided no other evidence, photographic, video or written from any other witnesses or tenants to confirm that smoke was entering their rental unit from a contravention of the no smoking rules in this building by the tenant who lived below them. In fact, in their April 29, 2020 email, they even stated "Again, I am not positive it is her" and that it was only their "best guess" that the smoke was coming from the balcony below them. Without any independent evidence of any type to confirm their allegations and based on a balance of probabilities, I find that the tenants have fallen well short of meeting the burden of proof required that would enable me to issue an order enabling them to recover any portion of the rent they paid the landlord during their tenancy. I dismiss their application for a retroactive rent reduction.

With respect to the allegations of threats being uttered by the tenant who resided in the rental unit below them, this would be a matter that should be and was taken up with the police. The landlord has no role in taking action to require tenants in their buildings from speaking to one another, one of the requests made by the tenant to the landlord's representatives.

Conclusion

The tenants' application 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: October 08, 2020

Residential Tenancy Branch