



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, CNL, OLC, RR, RP, MNDCT, FFT

Introduction

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

- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 28, 2021 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlords to complete repairs to the rental unit, pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female) and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 41 minutes.

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the two landlords and the two tenants all affirmed under oath that they were not recording the hearing.

The male landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the male tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence.

The male tenant confirmed receipt of the landlords' 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the female landlord's surname and the landlords' mailing address city. Both parties consented to these amendments during this hearing.

Settlement of End of Tenancy Issue

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 and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2021, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenants are vacating the rental unit pursuant to the landlords' 2 Month Notice, dated January 28, 2021;
3. The landlords agreed that the tenants are entitled to one-month free rent compensation, pursuant to section 51 of the *Act* and the landlords' 2 Month Notice, and that the tenants are not required to pay any rent to the landlords for the month of June 2021;
4. The tenants agreed to bear the cost of the \$100.00 filing fee paid for this application;
5. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their application at this hearing, except for their monetary claim.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties understood and agreed to the above terms, free of any duress or coercion. Both parties agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

The parties were unable to settle the tenant's application for a monetary order and asked that I make a decision about it. Below are my findings.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2015. Both parties signed a written tenancy agreement. Monthly rent in the current amount of \$1,400.00 is payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$100.00 were paid by the tenants and the landlords continue to retain both deposits. The tenants continue to reside in the rental unit.

As per their application, the tenants seek a monetary order of \$33,978.00. The landlords dispute the tenants' application.

The male tenant testified regarding the following facts. The tenants seek a monetary order. There were multiple issues throughout this tenancy. The landlords did not do their "due diligence." The landlords did not evict other occupants for dealing with the tenants' personal and business mail or for making noise. There are police reports regarding this. There was damage on the property. There was 100-amp service for a single family at the rental property. The landlords blamed the power usage on the tenants. Everything was wired together, which was against building and electrical

codes. The tenants did not have quiet enjoyment of the rental unit. The landlords did not repair any septic issues voluntarily, they were ordered to do so by a “third-party regulatory body.”

The male landlord testified regarding the following facts. The male tenant asked the landlords if his friend, who worked for him, could move into the rental property basement. The landlords made a mistake and allowed the male tenant’s friend to move in, without signing a tenancy agreement. That occupant totalled the downstairs suite, and it has been empty for two years now. The landlords cannot just evict people without proof of noise. The male tenant only took a video of the noise, which was illegal to do. There were issues between the upstairs and downstairs suites. The landlords provided proof of fixing the septic and electrical issues at the rental unit, which cost \$50,000.00. The male tenant refused access to the rental unit for electrical repairs on Saturdays, because he said it was his “family time.”

Analysis of Tenants’ Monetary Application

During the hearing, I notified the tenants that as the applicants, they were required to present their application. The following Residential Tenancy Branch (“RTB”) *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim.

The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenants did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During the hearing, the tenants failed to properly go through specific claims and the amounts for each claim. This hearing lasted 41 minutes, so the tenants had ample opportunity to present their monetary application. The tenants spoke for the majority of the hearing time, as compared to the landlords. The tenants submitted numerous documents but failed to go through any of them, during this hearing.

Section 28 of the Act deals with the right to quiet enjoyment (my emphasis added):

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;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 “Entitlement to Quiet Enjoyment” states the following, in part (my emphasis added):

*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.*

***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.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for \$33,978.00, without leave to reapply. I find that the tenants failed the above four-part test. The landlords disputed the tenants' claims.

I find that the tenants did not provide sufficient evidence to substantiate their monetary claim for \$33,978.00. The tenants did not indicate how they arrived at the above monetary amount. The tenants did not provide a breakdown of their monetary claim, did not explain what amounts they were seeking and why, did not indicate how the landlords were responsible for any losses, and did not indicate the tenants' efforts to mitigate their losses.

While the tenants found other occupants to be noisy and interfering with their mail, these complaints were not necessarily subject to intervention by the landlords. Residing in a multi-unit property sometimes leads to disputes between tenants. A certain level of noise is to be expected, given the location of the tenants' rental unit neighbouring other units. The occupants living around the tenants are entitled to quiet enjoyment of their units, including completing activities of daily living and using the units for different purposes. The tenants cannot decide how or when the occupants' units are to be used and for what purposes. The rights of both parties must be balanced.

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.

I find that there is insufficient evidence to demonstrate that the landlords failed to take appropriate action to follow up on the tenants' noise and mail complaints about the occupants living around them. The landlords cannot simply evict other occupants because the tenants want this action taken. The landlords require evidence to initiate eviction proceedings against other occupants and claimed that they did not have sufficient evidence, aside from a video they believe the male tenant recorded illegally.

I find that the noise referenced by the tenants are a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above. I find that the tenants failed to provide sufficient evidence of a loss of quiet enjoyment. The tenants did not indicate whether any noise bylaws were violated, nor whether they contacted any bylaw officers for enforcement. The tenants did not indicate specific dates when these noise violations occurred. The tenants stated that they contacted police, regarding the mail issues, but did not reference any police reports for same, during this hearing.

Conclusion

I order both parties to comply with all of the above settlement terms.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached Order of Possession effective at 1:00 p.m, on June 30, 2021, to be used by the landlord(s) **only** if the tenant(s) do not abide by condition #1 of the above settlement. The tenant(s) must be served with this Order as soon as possible after they do not comply with the above agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the tenants are not required to pay any rent to the landlords for the month of June 2021, pursuant to section 51 of the *Act* and the landlords' 2 Month Notice, dated January 28, 2021.

The tenants must bear the cost of the \$100.00 filing fee paid for this application.

The remainder of 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: April 29, 2021

Residential Tenancy Branch