



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under to section 62; and
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67.

A teleconference hearing was conducted on February 23, 2021. The hearing was reconvened in written format pursuant to section 74(2)(b). This decision should be read in conjunction with the decisions dated March 04 and 22, 2021.

Preliminary Issue – Bias and conflict of interest

The tenant states that I should not adjudicate this file because there is bias and conflict of interest.

Residential Tenancy Branch Policy Guideline 10 states:

An arbitrator will refuse to conduct a hearing if he or she is satisfied that there is a reasonable apprehension of bias. A reasonable apprehension of bias exists when an arbitrator is satisfied that a person who is informed of all the facts would reasonably conclude that there is an appearance of bias on the part of the arbitrator.

A reasonable apprehension of bias may exist where the arbitrator has a personal or financial interest in the case which he or she is to hear.

I did not have any previous contact with the parties before this application was filed and have no personal interest in the outcome of this matter. Policy Guideline 10 explicitly states that “the fact that one or both of the parties may have appeared before the arbitrator previously, or that the arbitrator previously denied an application by one of the parties, does not by itself support a claim of bias.”

As such, I reject the tenant’s objection that I adjudicate this file.

Preliminary Issue – Service

Both parties submitted written submissions for the reconvened hearing in writing, according to the directions provided in the interim decision of March 22, 2021.

On April 21, 2021 the tenant submitted a second written submission after the April 14, 2021 deadline.

The tenant’s second written submission was submitted late. As such, I am not considering the tenant’s second written submission.

Preliminary Issue – Cancellation of the Notice

At the outset of the hearing on February 23, 2021 the landlord stated he cancelled the November 28, 2020 Notice and that he is not seeking an order of possession based on the Notice. The landlord confirmed in the written submission the Notice is cancelled.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant’s application for cancellation of the Notice without leave to reapply.

Preliminary Issue – Order for the landlord to comply

Section 59 of the Act states:

Starting proceedings

59(2) An application for dispute resolution must

[...]

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

The tenant's application for an order for the landlord to comply with the Act states:

COMPLY WITH DECISION FROM BC SUPREME COURT APPEAL AND SECTION 52 RTA PROVIDE TRUTHFUL REASONS WITH FULL DETAILS SUPPORTED BY EVIDENCE IN ANY NOTICE TO END TENANCY

The tenant states the order for the landlord to comply is related to the Notice. I have dismissed the tenant's claim to cancel the Notice and I will not be deciding if the Notice could have resulted in an order of possession. I understand the tenant claims the landlord is failing to comply with the Act and issuing invalid notices to end the tenancy and I will consider this issue under the tenant's claim for a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67.

As I am unable to identify an order I could make outside of adjudicating the Notice and the monetary claim, I dismiss the tenant's claim for an order for the landlord to comply.

Preliminary Issue – Value of monetary claim

The tenant applied for \$1,100.00 in compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67. When the tenant uploaded evidence she included a monetary worksheet increasing her claim by an addition \$5,500.00. Rule of Procedure 4.1 and Policy Guideline 23 require changes to the application to be made through the amendment process.

The tenant did not provide form RTB-42 to amend her application, thus the monetary claim remains \$1,100.00.

Preliminary Issue – section 95(3) of the Act

The tenant applied for a monetary order under section 95(3) of the Act. Penalties issued under this section are not monetary orders issued in favour of a complainant. The Director of the Residential Tenancy Branch has not used the authority under section 9(2) of the Act to delegate to arbitrators the authority to issue an administrative penalty.

The tenant may submit a complaint to the Residential Tenancy Branch's Compliance and Enforcement Unit using this link: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/compliance-and-enforcement>.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

The tenant states the most recent notice to end tenancy is the fifth time the landlord tried to terminate her tenancy:

This is the fifth time my landlord has illegally evicted me and he has outright lied about me and the reasons for eviction for all of them just like he did for this one. And this was proven everytime and he was just given a free pass everytime. And I am fed up with

My landlord is currently being investigated by the compliance and enforcement unit for all these illegal retaliatory evictions issued in bad faith [pages 2 and 3]

(emphasis added)

The tenant's application for compensation for monetary loss states:

It is harassment and a serious violation of my right to quiet enjoyment for this landlord to give me an eviction notice that doesn't have all information required. This issue was appealed to BC Supreme Court by me so he knows he must provide this information and he still did not. which is an offence in the RTA violated section 28(2) 52, 47(3) . sect 95(3) ,67.

The tenant explains on November 10, 2020 the landlord harassed her:

On Novemer 10, 2020 my landlord gave me a mutual agreement to end tenancy letter stating I was not happy living in the building , not happy with the way he managed the building and he offered to pay me \$3000 to move out at the end of January 2021. **He also threatened me that if I did not take his offer and move that he would go to the tenancy branch and evict me.**

I replied and told him it was illegal to threaten tenants like this and that I had done nothing whatsoever to be evicted for and that he had no grounds to evict me and if he did he would be evicting me not offering to pay me \$3000 to move. **I told him I was not moving and I warned him that he would be in big trouble if he harassed me with another illegal eviction and lied about me and the reasons again and that I did nothing to be evicted for. A few weeks later he evicted me for engaging in illegal activity, and made other false accusations in the eviction notice [page 3]**

(emphasis added)

The tenant then affirms she suffered a loss of quiet enjoyment because the landlord served her a notice to end tenancy without reasons:

1. The landlord gave me another eviction notice that did not have all the information required which was the full details for reasons for eviction on page 3.

This landlord knew he was required to provide this information as this exact issue was one of my grounds for judicial review. He did this deliberately to try and deny me a fair hearing as he does with every eviction. And he did not provide this information when I made a written request for it. Any landlord that refuses to tell a tenant why they have been evicted is clearly a landlord acting in bad faith. **This was a substantial interference with my right to quiet enjoyment.**

2. The landlord violated section 47(3)of the Act A notice under this section must comply with section 52 [form and content of notice to end tenancy].and violated section 52 of the Act Form and content of notice to end tenancy [pages 3 and 4]

(emphasis added)

The tenant explains a prior notice to end tenancy issued by the landlord was cancelled:

However just because the eviction notice is not a legal valid notice because the landlord refused to put the information required in it this does not mean the landlord gets a free pass for evicting me for something I did not do and that he knew I did not do **1.This landlord evicted me for engaging in illegal activity and this was an outright blatant lie. I did nothing whatsoever to be evicted for and to evict me and for illegal**

activity knowing this was not true is a very serious violation of the act it is illegal. **My landlord was not confused as to what illegal activity is as this was one of the grounds for eviction in the notice that was heard for my judicial review.** The landlord also violated section 95(4) by putting false information in a legal document that was also going to be used for a proceeding [pages 4 and 5]

(emphasis added)

The tenant says she was harassed by another tenant in the same rental building and made a complaint against her landlord:

And if fact I am the only tenant who was harassed by another tenant of the landlords and I made a complaint to the compliance and enforcement unit about my landlord a few weeks prior to him evicting em and that dept gave my landlord a written warning and told him he must provide me and all tenants with quiet enjoyment and respond to all complaints he gets as he had ignored all of mine about this drunk male tenant that he let harass and threaten me for september and october 2020 and destroy my \$500 flower garden [page 6]

The tenant is claiming for compensation in the amount of \$1,100.00:

MONETARY CLAIM FOR \$1100.00

I made a monetary claim for a rent abatement for a full refund of my rent paid for November 2020 as all of the above serious violations by the landlord were in November 2020. I at no time ever agreed to pay my landlord money to break the law, to violate our rental contract and substantially interfere with my tenancy and life. And to illegally evict me and falsely accuse me of things and outright lie about me. [page 7]

The landlord confirmed the Notice was cancelled and did not explain why he cancelled the Notice:

The tenant's supporting argument, received by the Landlord on April 6, 2021 via email, primarily includes additional unfounded claims which were not included in her original claim against the Landlord. For this reason, the Landlord is not providing a rebuttal to the tenant's claims which were received by the Landlord on April 6, 2021. The tenant's original claim was related to a Notice to End Tenancy issued to her on November 28, 2020. The Landlord would like to remind the arbitrator that a binder of information has been provided to both the tenant and to the Residential Tenancy Branch in support to rebut the tenant's original claim against the Landlord which was to be heard at arbitration on February 23, 2021.

We would like to reiterate that the Landlord's position to cancel the Notice to End Tenancy dated November 28, 2020 was not an acknowledgement that the complained conduct as a tenant was not sufficient grounds to terminate her tenancy as of that time. Given a review of the evidence since November 28, 2020 which includes excessive continual intimidating unwarranted disrespectful accusations of lies and thievery against the Landlord and more specifically repeating these defamatory comments by posting on [omitted] targeting the Landlord's advertisement for potential new tenants. As at February 23, 2021 it was made clear that the tenant's conduct since November 28, 2020 would result in a new Notice to End Tenancy which is to include additional ground that as a tenant she has significantly interfered with or unreasonably disturbed the Landlord and seriously jeopardized the lawful right of the Landlord.

(emphasis added)

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant stated in her application and in the written submission that she is claiming for compensation for loss of quiet enjoyment because the landlord harassed her on multiple occasions and served her four notices to end tenancy before the November 28, 2020 Notice.

Section 28 of the Act states:

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 Branch Policy Guideline 6 states:

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.

[...]

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

(emphasis added)

Based on the tenant's written submission, I find the landlord breached section 28(b) of the Act by serving the tenant 5 notices to end tenancy that were cancelled, including the November 28, 2020 Notice cancelled by the landlord. I further find the tenant suffered a loss of her right of quiet enjoyment because of the landlord's non-compliance with the Act.

I accept the tenant's evidence that the interference caused by the landlord to the tenant's quiet enjoyment of the rental unit was substantial, frequent, and ongoing. Furthermore, besides the five notices to end tenancy, the tenant described a threat from the landlord on November 10, 2020. The landlord did not address the specific tenant's statements in his response.

In consideration of the quantum of damages, I refer again to Residential Tenancy Branch Policy Guideline 6:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration 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.

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.

(emphasis added)

I find the tenant has been able to live in the rental unit but was significantly deprived of her right to live peacefully because the landlord served her 5 notices to end tenancy for cause.

In view of the circumstances, I find it is reasonable to award the tenant compensation in the amount of \$500.00.

Pursuant to sections 7 and 67 of the Act and considering Residential Tenancy Branch Policy Guideline 6, I award the tenant compensation for loss of quiet enjoyment in the amount of \$500.00.

Conclusion

Pursuant to section 62(4)(b) of the Act, I dismiss the tenant's application for cancellation of the Notice without leave to reapply.

I dismiss the tenant's application for an order for the landlord to comply with the Act with leave to reapply.

Pursuant to sections 7, 67 and 72(2)(a) of the Act, I authorize the tenant to reduce \$500.00 from a future rent payment.

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: May 12, 2021

Residential Tenancy Branch