Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, LRE, MNDCT, FFT, FFL

Introduction

A hearing was convened on April 01, 2021 in response to cross applications.

The Landlord filed an Application for Dispute Resolution, naming the Tenant with the initials "ES", in which the Landlord applied for an Order or Possession and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Agent for the Landlord stated that the rental unit has been vacated and, as such, the Landlord is withdrawing the application for an Order of Possession.

The Agent for the Landlord stated that on January 06, 2021 the Landlord's Dispute Resolution Package was served to the Tenant with the initials "ES". The Tenant with the initials "ES" acknowledged receipt of these documents.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) and/or the tenancy agreement, for an Order suspending or setting limits on the Landlord's right to enter the rental unit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Tenant with the initials "ES" stated that the rental unit was vacated "two days ago" and, as such, the Tenants are withdrawing the application to cancel a One Month Notice to End Tenancy for Cause, the application for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement, and the application for an Order suspending or setting limits on the Landlord's right to enter the rental unit.

The Tenant with the initials "ES" was the spokesperson for the Tenants during the hearing and will hereinafter be referred to as the Tenant.

The Tenant stated that on January 08, 2021 the Dispute Resolution Package was delivered to the Landlord's business office. The Agent for the Landlord acknowledged that the Dispute Resolution Package was delivered to the office.

On March 10, 2021 the Tenants filed an Amendment to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss. The Tenant stated that the Amendment and all evidence submitted to the Residential Tenancy Branch by the Tenants was delivered to the Landlord's business office on March 11, 2021. The Agent for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord stated that on March 22, 2021 all of the evidence the Landlord submitted to the Residential Tenancy Branch was served to the Tenant. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The hearing on April 01, 2021 was adjourned for reasons outlined in my interim decision of April 02, 2021. The hearing was reconvened on July 27, 2021 and was concluded on that date.

At the reconvened hearing the participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

At the reconvened hearing each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings. At the reconvened hearing each participant affirmed that they would not record any part of the proceedings.

Issue(s) to be Decided

Are the Tenants entitled to compensation for loss of quiet enjoyment of the rental unit and/or losses related to the Landlord breaching the right to quiet enjoyment?
Is either party entitled to recover the fee paid to file this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenants agree that:

- The tenancy began on April 01, 2020;
- The Tenants agreed to pay $2,850.00 in rent by the first day of each month;
- A One Month Notice to End Tenancy for Cause was posted on the Tenants' door, which declared they must vacate the rental unit by January 31, 2021;
- The Tenants disputed the One Month Notice to End Tenancy for Cause; and
- the Tenants vacated the rental unit on March 31, 2021.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit.

The claim for loss of quiet enjoyment is based, in part, on the Tenants' submission that the Tenants have been repeatedly disturbed by noise emanating from the suite above, which is unit 901. In support of this claim the Tenant stated that:

- numerous video recordings submitted in evidence which represent the noises typically emanating from the upper suite;
- the Tenants were disturbed by these noises several times each day;
- sometimes the noises would last 5 minutes and sometimes they would last 30 minutes;
- the noises were reported to the Landlord by text message and email on numerous occasions;
- the Landlord did not investigate any of the noise complaints;
- the Resident Manager may have knocked on the door of unit 901, but "I don't know";
- the email from the occupant of unit 802, dated January 18, 2021, shows other neighbours were disturbed by noises from unit 901; and
- the noise significantly disturbed their sleep and daily living activities.

In response to the issue of noise, the Resident Manager stated that:

- she has listened to the video recordings submitted in evidence by the Landlord and she was unable to detect any unreasonable noises;
- she received numerous complaints from the Tenants regarding noises emanating from the upper suite;
- either she or the building concierge investigated each complaint;
- on several occasions when she went to the upper suite to investigate the complaint she listened at the door and could hear no noises;
- on several occasions when she went to the upper suite to investigate the

complaint, she knocked on the door of the suite and determined that the occupants had been sleeping;
- when the concierge investigated the complaints, the concierge was unable to corroborate the Tenants' concerns;
- she spoke with the neighbours of unit 801, who advised her they were not being bothered by noise emanating from unit 901; and
- the current occupants of unit 801 have not complained about noise, even though the same people are living in unit 901.

The Tenants' claim for loss of quiet enjoyment is based, in part, on the Tenants' submission that the Tenants' access fobs were not working properly. In support of this claim the Tenant stated that:

- the access fobs provide access to the rental unit and the Tenants' storage area;
- approximately 2 or 3 times each month the access fobs did not work properly;
- the Tenants did not keep a record of dates/times when the access fobs did not work properly;
- the Tenants would often have to swipe the access fob several times before it would provide access to the rental unit or the storage area;
- the problem with the access fobs was reported to the Resident Manager on several occasions, who repeatedly assured the Tenants the fobs were working properly;
- shortly before the end of the tenancy the Landlord replaced the batteries in one of the fobs;
- an issue with accessing the storage area with the access fob was reported to the Landlord approximately two months after the tenancy began;
- the issue with accessing the rental unit was first reported to the Landlord approximately four months after the tenancy began;
- the Tenants continued to have difficulty accessing the rental unit/storage area with the fobs even after the Resident Manager assured them the fobs were working;
- in January of 2021 he again reported that the fob that provides access to the storage area was not working;
- he could not access the storage area in January of 2021 even after the Resident Manager told him she would re-program them; and
- he was told the Resident Manager had left a new fob for him at the front desk in January of 2021 but he did not pick it up.

In response to the issue with the access fobs the Resident Manager stated that:

- the access fob provides access to the rental unit and the Tenants' storage unit;
- shortly after the tenancy began the Tenants advised her that the access fob did not provide access to the storage area;
- she subsequently determined that the Tenant had attempted to access the incorrect storage area;
- the Tenants did not report a problem with the access fob again until January of 2021;
- in January of 2021 she asked the Tenants to provide details of the issue with accessing the rental unit, but such details were not provided;
- sometime after receiving the report in January of 2021, the Landlord replaced the batteries in one of the access fobs; and
- in January of 2021 she left a new access fob for the Tenants at the front desk, which she understands the Tenants did not pick up.

The Landlord submitted an email, dated January 08, 2021, in which the Tenant informed the Landlord that his fob for his front door and the storage area was not working. The Resident Manager responds to that email approximately one half hour later, at which time she tells the Tenant she will reprogram the fob, as she has previously done and she will leave a fob at the front desk. In that same response she asks for clarification about the fob not working on the door to the rental unit.

In the emails exchanged on January 08, 2021 the Tenant thanked the Resident Manager for "ignoring my fob and other issues I mentioned just like always". In that same email chain, the Resident Manager declared that after she previously reprogramed the access for the storage room, the Tenant had not informed her that he was continuing to have problems with his access fob.

The Tenants submitted an undated video to show that someone made several attempts to access the unit with an access fob before entry could be gained.

The Tenants submitted three videos to show that someone made a few attempts to access the storage unit with an access fob on January 11, 2021. Access to the storage unit was not gained on the videos.

The Tenants submitted a video to show that someone made a few attempts to access the storage unit with an access fob on January 12, 2021. Access to the storage unit was not gained on the video.

The Tenants' claim for loss of quiet enjoyment is based, in part, on the Tenants'

submission that the Resident Manager's husband entered the rental unit on two occasions, without removing his shoes. In support of this claim the Tenant stated that:

- approximately 4 or 5 months after the start of the tenancy the Resident Manager's husband and a plumber came to the rental unit to fix a leak, at which time the Resident Manager entered the unit without removing his shoes;
- he asked both men to remove their shoes;
- the plumber covered his shoes with a cloth covering and subsequently repaired a leak;
- the Resident Manager's husband stared at him and left immediately after being asked to remove his shoes;
- a few months after the leak was repaired, the Resident Manager's husband came to the rental unit to inspect the fire alarm;
- he asked the Resident Manager's husband to remove his shoes;
- the Resident Manager's husband again stared at him and left immediately after being asked to remove his shoes; and
- he wanted the shoes removed because he did not want dirt tracked into the unit, particularly during COVID-19.

The claim for loss of quiet enjoyment is based, in part, on the Tenants' submission that the Landlord was late making two repairs, one of which was the access fob which was previously discussed. In support of this claim the Tenant stated that:

- approximately 6 or 7 months after the start of the tenancy the Tenants reported a small leak under the kitchen sink; and
- the small leak was repaired four days after it was reported to the Landlord.

In response to the issue with the leak the Resident Manager stated that:

- the leak was small;
- it was hard to get tradespeople due to COVID-19;
- a plumber repaired the leak as soon as possible; and
- it may have taken four days to arrange for the repair.

The claim for loss of quiet enjoyment is based, in part, on the Tenants' submission that the Landlord breached COVID-19 rules by failing to enforce pandemic rules that limited the number of occupants in an elevator to two people. In support of this claim the Tenant stated that:

- a portion of this residential complex is a hotel and a portion is rented to tenants on a monthly basis;
- on September 09, 2021 he observed 5 hotel guests using the elevator in the

residential/hotel complex;
- he reported his concerns to the Landlord who advised him that he should report his concerns to the hotel manager;
- he reported his concerns to the hotel and the hotel ignored his concerns;
- on September 09, 2021 a rule limiting the number of people in the elevator was not posted on the floor or in the elevator;
- a sign limiting the number of occupants in the elevator was posted a few weeks after September 09, 2021;
- he reported his concerns to WorksafeBC, who advised him that they would investigate; and
- he does not know if WorksafeBC determined that the complex had breached any COVID-19 protocols.

In response to the issue with COVID-19 rules the Resident Manager stated that:
- a sign requiring social distancing was posted in the complex;
- a sign limited the number of occupants in the elevator to two people was posted by the hotel;
- she does not know when that sign was posted, but it was posted when COVID-19 protocols demanded;
- the Tenant was asking that hotel guests be prohibited from using one of the elevators in the complex during COVID-19;
- the hotel was not willing to prevent hotel guests from using one of the elevators;
- the Tenant reported his concerns to the City and to WorksafeBC; and
- the City and WorksafeBC investigated the Tenant's concerns but did not conclude that the complex was breaching any COVID-19 protocols.

At the conclusion of the hearing both parties were provided with the opportunity to provide additional relevant evidence and neither party raised issues that have not been outlined above.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act),* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

On the basis of the undisputed evidence, I find that the Tenants were served with a One Month Notice to End Tenancy for Cause, which declared that they must vacate the rental unit by January 31, 2021.

Given that the Tenants did not vacate the rental unit by January 31, 2021 and then vacated the rental unit prior to the hearing scheduled to consider their application to cancel the One Month Notice to End Tenancy for Cause, I find it was reasonable for the Landlord to file an Application for Dispute Resolution seeking an Order of Possession. I therefore grant the Landlord's application to recover the fee for filing an Application for Dispute Resolution. I am granting the filing fee to the Landlord even though the application for an Order of Possession was subsequently withdrawn, as the application for an Order of Possession was withdrawn as a result of the rental unit being vacated.

Section 28 of the *Residential Tenancy Act (Act*) guarantees a tenant the right to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*, and use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Tenants were disturbed by noises emanating from the upper unit, which is clearly evidenced by the testimony of the Tenant and the numerous complaints made to the Landlord regarding the noise. I find, however, that the Tenants have submitted insufficient evidence to show that the noises emanating from the upper unit were unreasonable.

In determining that the noises emanating from the upper unit were not unreasonable I was influenced, in part, by the video recordings submitted in evidence by the Tenants, which the Tenant stated are representative of the types of noises that were regularly disturbing them. I have listened to the video recordings (at my highest volume) and I am able to hear some sort of light tapping noises, the source of which I am unable to determine, and some humming noises, similar to the noise made by a vacuum cleaner. As these noises are not particularly loud; they are not the noises which typically disturb

others, such as loud music or yelling, and they could be noises associated to typical daily living activities, I cannot conclude that they are unreasonable.

In determining that the noises emanating from the upper unit were not unreasonable I was further influenced by the correspondence from other people living near the rental unit. Specifically, the occupant of unit 902 reports not being disturbed by occupants of unit 901. The occupant of unit 802 reports hearing “dropping noises” from above on occasion and other noises from below. In my view, neither of the reports from these occupants supports the Tenants’ submission that the noises were unreasonable, that they occurred several times each day, or that they lasted for between 5 and 30 minutes.

I note the Tenants have not submitted any evidence from other occupants of the residential complex that would establish the noise emanating from unit 901 is unreasonable.

In determining that there was insufficient evidence to establish that the noises emanating from the upper unit were unreasonable, I was further influenced by the Resident Manager’s undisputed testimony that she received no complaints about noise emanating from unit 901 from the current occupants of unit 801. This supports a conclusion that the noises were not unreasonable, regardless of the fact they were disturbing these Tenants.

On the basis of the testimony of the Landlord and the documentary evidence presented, I find that the Landlord made reasonable efforts to investigate the noise complaints made by the Tenants and they were unable to conclude unreasonable noises were emanating from unit 901. Specifically, I find that on more than one occasion the Resident Manager and the concierge went to the unit 901 in an attempt to determine if the noise complaints were founded and they were unable to detect unreasonable noises; the Resident Manager suggested the Landlord contact the concierge when the noise was occurring so the concierge can intervene when the noise was occurring; the Resident Manager communicated with neighbors who did not report unreasonable noises; and the Resident Manager discussed the concerns with the occupant of unit 901, who denied being noisy.

As the Tenants have failed to establish the occupants above them were making an unreasonable amount of noise and/or the Landlord did not respond appropriately to the noise complaints made by the Tenants, I find that the Tenants are not entitled to compensation related to noise emanating from an upper suite.

On the basis of the undisputed evidence, I find that within a few months of this tenancy beginning the Tenant reported that he was having difficulty using his access fob to access the storage area.

On the basis of the testimony of the Resident Manager and emails submitted as evidence, I find that the Landlord investigated the issue with accessing the storage area when it was first reported and that the Landlord concluded the issue was resolved. I find the Tenant's testimony that the Resident Manager's repeatedly assured the Tenants the fobs were working properly serves to corroborate the Resident Manager's testimony that she understood the fobs were working properly.

I find that the Tenants have submitted insufficient evidence to corroborate the Tenant's testimony that the problem with the access fob was reported on several occasions. In reaching this conclusion I was influenced by the absence of any documentary evidence that clearly refutes the Resident Manager's testimony that the problem was not reported again until January of 2021 or that corroborates the Tenant's testimony it was reported on several occasions.

I find that the Tenant's email of January 08, 2021, in which he thanked the Resident Manager for "ignoring my fob and other issues I mentioned just like always" does not help establish the issue with the fob was reported on several occasions, as the Tenant's comment is refuted by the Resident Manager's email in which she declared that after she previously reprogramed the access for the storage room, the Tenant had not informed her that he was continuing to have problems with his access fob.

As there is insufficient evidence to establish that the Tenants informed the Landlord there was a problem with the access fobs after the initial report near the start of the tenancy and January 08, 2021, I find that the Tenants are not entitled to compensation for any problems with the access fobs prior to January 08, 2021. A Landlord cannot be expected to correct a deficiency that the Landlord is not aware of.

I specifically note that I am not concluding that the Tenants were not experiencing difficulty with the access fobs between the time of the initial report and January 08, 2021. Rather, I am simply finding that they are not entitled to compensation for any difficulties experienced during that time as there is insufficient evidence the problem was brought to the attention of the Landlord.

On the basis of the testimony of the Resident Manager and the email dated January 08, 2021 (3:29 p.m.), I find that the Landlord made reasonable efforts to address the issue

with the fob that was reported that day. Specifically, I find that she advised the Tenant that a reprogramed fob would be left at the front desk for him. On the basis of the testimony of both parties, I find the Tenants did not pick up the re-programmed fob that was left with the front desk, which likely explains why the Tenant was unable to access the storage area on January 11, 2021 and January 12, 2021.

In determining that the Landlord made reasonable efforts to address the issue with the access fob after it was reported on January 08, 2021, I was further influenced by the undisputed evidence that the Landlord replaced the batteries in one of the access fobs during the latter portion of the tenancy.

In determining that the Landlord made reasonable efforts to address the issue with the access fob after it was reported on January 08, 2021, I was further influenced by the fact the Resident Manager asks, in the emails exchanged on January 08, 2021, for clarification regarding the issue with the door to the rental unit. This request, in my view, demonstrates the Landlord's willingness to investigate and remedy the issue. The Tenant's failure to provide clarifying details, in my view, demonstrates a failure to contribute to a resolution.

As the Tenants have failed to establish the Landlord did not respond to reports of a problem with access fobs in a reasonable and timely manner, I find that the Tenants are not entitled to compensation related to the access fobs.

I find that in most circumstances it is reasonable for a tenant to ask any person entering a rental unit to remove their shoes. On the basis of the testimony of the Tenant, I find that the Resident Manager's husband left the rental unit immediately after being asked to remove his shoes. As the Resident Manager's husband left the unit immediately after being informed that he could not wear shoes in the rental unit, I find that the Tenants are not entitled to compensation related to wearing of shoes in the rental unit.

On the basis of the undisputed evidence that it took four days for the Landlord to arrange to repair a small plumbing leak, I find that the Landlord repaired the reported leak in a reasonable timely manner. In concluding that the repair was completed in a reasonably timely manner, I was influenced by the undisputed evidence that the leak was small and, as such, cannot be considered an emergency. In reaching this conclusion I was further influenced by my understanding that it was difficult to find tradespeople during the COVID-19 pandemic.

As the Tenants have failed to establish the Landlord did not respond to reports of a leak

in a reasonable and timely manner, I find that the Tenants are not entitled to compensation related to the repair.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord breached COVID-19 protocols by failing to post signage limiting the number of people in elevators. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the signs were not posted on September 09, 2021 or that refutes the Resident Manager's testimony that the signs were posted when COVID-19 protocols required. I note that neither party provided evidence to show when such signage was required to be posted.

In determining that there is insufficient evidence to establish that the Landlord breached COVID-19 protocols, I was further influenced by the undisputed testimony that the Tenant reported his concerns to WorksafeBC and no evidence has been submitted to indicate WorksafeBC determined there was a problem.

I find that the Landlord acted reasonably when the Tenant was told to report his concerns about hotel guests using the elevator inappropriately, as the Landlord does not have authority over hotel guests and the Tenant, being the witness, was the appropriate party to report those concerns to the proper authority.

On the basis of the testimony of the Resident Manager, which is corroborated by documentary evidence, I find that the Tenant wanted the Landlord to prohibit hotel guests from using one of the elevators in the complex during COVID-19. I find that expectation unreasonable and I find it reasonable for the Landlord to deny the request.

As the Tenants have failed to establish that the Landlord did not reasonably comply with COVIF-19 protocols, I find that the Tenants are not entitled to compensation for any alleged breaching.

I find that the Tenants have failed to establish the merits of the Application for Dispute Resolution. I therefore dismiss the Tenants' Application for Dispute Resolution to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim of $100.00 in compensation for the fee paid to file an Application for Dispute Resolution. The Landlord will be granted a monetary Order for $100.00 that names the Tenant with the initials "ES", as that is the

party named on the Landlord's Application for Dispute Resolution. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants' application for a monetary Order is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act.*

Dated: July 29, 2021

Residential Tenancy Branch