



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PATTONY INVESTMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

GK ("landlord") represented the landlord in this hearing. 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. The tenant confirmed service of the landlord's evidentiary materials. In accordance with section 88 of the *Act*, I find that the tenant duly served with the landlord's evidentiary materials.

Preliminary Issue: Tenant's Late Evidence

The landlord testified in the hearing that he did not receive the tenant's evidentiary materials until January 4, 2022, 6 days prior to the hearing date, and only had the opportunity to review the materials on the morning of the scheduled hearing. The landlord testified that they were reviewing the materials since 3:00 a.m. on the date of the scheduled hearing.

The tenant responded that they had sent the package by way of registered mail on December 24, 2021, and that it was due to multiple issues that caused the delay including sick kids, and the tenant's own illness, chronic pain and depression.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

Where documents are served by registered mail, a package is deemed received 5 days after mailing. In this case, the package is deemed to have been received by the landlord on December 29, 2021, 11 days before the hearing date.

This late evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case I am satisfied that the landlord had an opportunity to review the tenant's evidentiary materials. The landlord also expressed concern about any further delays with this matter, and confirmed that they wished to proceed, and were okay with the admittance of the late evidence. Accordingly, I allowed the tenant's late evidence to be admitted for the purposes of this hearing, and the hearing proceeded as scheduled.

Preliminary Issue: Tenant's Digital Evidence

The tenant submitted several videos for consideration, several of which were in a format that cannot be viewed by the Arbitrator. The following error message occurred when trying to view videos 12 through to 22: "This item was encoded in a format that's not supported."

RTB Rules of Procedure states the following about submission of digital evidence for an application:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

As mentioned to the parties during the hearing, any digital evidence that could not be viewed will not be considered.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications and my findings around it are set out below

This fixed-term tenancy began on August 1, 2020, and was to end on July 31, 2021. The tenancy ended when the tenant moved out on May 29, 2021. Monthly rent was set at \$1,800.00, payable on the first of the month. The landlord has returned the tenant's security deposit of \$900.00.

The tenant filed the following monetary claims as set out in the table below:

Item	Amount
Return of Portion of Rent- October 2020 to May 2021	\$3,500.00
Moving Expenses-Truck Rental	127.00
Moving Expenses-Bubble Wrap	22.40
Moving Expenses- 3 Helpers	300.00
Total Monetary Order Requested	\$3,949.40

The tenant's application is for monetary compensation related to the tenant's loss of quiet enjoyment and landlord's failure to comply with the *Act*. The tenant is seeking a partial refund of their rent for the period of October 2020 to May 2021, as well as compensation for their moving costs. The tenant submits that they suffered from an unreasonable amount of disturbance from other tenants in the rental building, and despite multiple complaints from the tenant, the landlord failed to take reasonable efforts to ensure the tenant's right to quiet enjoyment of her rental unit. The tenant testified that they had to endure an unbearable amount of disturbance from a neighbouring suite which included non-stop barking from the dogs in the rental unit above the tenant, not being able to open the window due to the smell of smoke, which included the smell of marijuana. The tenant feels that despite their multiple complaints, the landlord refused to investigate or deal with the matter.

The tenant' called a witness in the hearing, AA, who is the tenant's partner. AA testified that they would hear dogs barking all the time, which was every time AA was over at the tenant's suite. AA testified that the dogs' owner would leave the two dogs on the balcony during the day, and the dogs would bark nonstop. The tenant submitted video footage of the dogs and the barking in their evidentiary materials.

AA testified the tenant was also fearful after an altercation with the daughter of the upstairs tenant. AA believes that the manager had connections with these tenants, and therefore dismissed the tenant's complaints. The tenant felt ignored by the landlord, and ultimately chose to move out.

The landlord testified that they had attempted to work with the tenant, and after investigating the matter, they were unable to confirm the source of the smoke. The landlord testified that the letter was sent to the tenants in question, but the tenants denied the allegations. The landlord testified that due to the number of tenants residing in the 200 unit building, it is difficult to ascertain or prove the source of noise or smells. The landlord testified that they had also attempted to address the matter with the barking dogs, but were informed that the dogs were service dogs.

The landlord testified that they have not received complaints from any of the other neighbouring tenants, nor the current tenant who currently resides in the rental unit. The landlord testified that they had attempted to assist the tenant by relocating the tenant to a different unit, or by allowing the tenant to terminate the fixed-term tenancy early. The tenant confirmed that they had declined the offer to relocate to a different rental unit as

the building manager had advised the tenant that they would have the same issue even if they relocated to a different rental unit.

The landlord feels that they have mitigated the matter by offering the tenant the ability to move out without any penalty despite the fixed-term agreement. The landlord testified that they had truly tried to assist the tenant given the options available, and that the tenant did not accept the multiple offers of different unit. Furthermore, the landlord argued that the tenant failed to support the value of the rent reduction claimed, and that the tenant did not suffer any losses to the landlord's actions.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the

Act on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The *Act* states the following about a tenant's right to quiet enjoyment:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

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

I have considered the testimony and evidentiary materials submitted by both parties. I accept the evidence of the tenant that they had suffered much distress during this tenancy. The onus is on the tenant, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffered a loss in the amounts claimed.

The tenant provided detailed evidence documenting how they have been disturbed by the actions of the other tenants in this multi-dwelling complex. The landlord disputes the tenant's claims that they have failed to adequately address the issues brought up by the tenant. As stated above, I have no doubts that the tenant was unable to enjoy their rental unit due to the barking that could be heard in their rental unit. This is evident in the recordings submitted by the tenant. However, as this is a multi-tenanted building, with multiple occupants, I find that the level of quiet enjoyment is impacted by the nature of the living space and construction of the home. Although I am sympathetic towards the tenant's situation, and the fact that they were impacted by the surrounded noise and smells from surrounding rental units, I find that the evidence does not support that the landlord had failed to address the matters during the tenancy. I find that the landlord did take steps to address the tenant's complaints, but given that the other parties denied any wrongdoing, the landlord was limited in their ability to pursue the matter further.

I also accept the evidence of the landlord that no other tenants had filed similar complaints, and current tenant in the rental unit has not raised similar issues with the landlord. Furthermore, as stated above, the tenant has a duty to mitigate their losses,

and in this case I am satisfied that given the fact that the landlord was unable to eliminate the disturbances for the tenant, the landlord did offer the tenant the ability to relocate to a different rental unit, or end the fixed-term tenancy without penalty. In this case, the tenant chose the latter. Although the tenant testified that they were informed that they likely would have experienced the same issues in a different rental unit, I do not find this belief to be supported in evidence.

Although I find that the tenant's expectations were not met during this tenancy, I do not find that the tenant has met the burden of proof to demonstrate that they suffered a loss due to landlord's failure to comply with the Act and tenancy agreement. I do not find that the tenant supported the losses claimed, nor did the tenant fulfill their obligations to mitigate the losses they suffered. Accordingly, I dismiss the tenant's entire application for monetary compensation without leave to reapply.

Conclusion

The tenant's entire 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: February 08, 2022

Residential Tenancy Branch