



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTERA PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC

Introduction

The matter was originally scheduled for a hearing to be held on October 28, 2021 by way of teleconference call to deal 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; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

These matters were originally assigned to, and heard by, a different Arbitrator. The Arbitrator had started the hearing, and had adjourned the hearing in order to allow the landlord an opportunity to review the tenant's evidentiary materials, and respond. Unfortunately, due to unforeseen circumstances, the Arbitrator originally assigned to this matter is unable to attend the reconvened hearing, and accordingly this application was re-assigned to myself. As noted to both parties in the hearing, as I was not in attendance at the previous hearing, the hearing must be heard as a new hearing before myself. I thank both parties for their patience while awaiting a final decision on this matter.

The landlord was represented by their legal counsel, BL, in this hearing. BL attended with two agents for the landlord, ND and DD. 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. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

At the outset of the hearing, the tenant confirmed that the tenancy had ended on October 31, 2021. Accordingly, the tenant's application for the landlord to comply with the *Act* and tenancy agreement is dismissed without leave to reapply.

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 this application and my findings around it are set out below.

This tenancy originally began as a fixed term tenancy on September 1, 2019, and continued on a month-to-month basis after September 30, 2020 until the tenancy had ended on October 31, 2021. Monthly rent was set at \$1,475.00, payable on the first of the month. The landlord had collected a security deposit of \$757.50 at the beginning of this tenancy, and which was returned at the end of the tenancy.

The tenant's application is for monetary compensation in the amount of \$35,000.00 for the tenant's loss of quiet enjoyment due to actions of the landlord and their agents. The tenant feels that the landlord and their agents have treated the tenant differently and unfairly during this tenancy, which resulted in a significant loss of quiet enjoyment while the tenant was residing there. The tenant documented and detailed the incidents and interactions with the landlord's agents that the tenant considered discriminatory in nature.

As stated above, I will not be reproducing every detail of the evidence and testimony presented in this decision, but the following are some of the main points the tenant had presented in support of their claim.

The tenant testified that the landlord failed to fix an issue with the intercom for seven months, which impacted the tenant and their guests' ability to enjoy the rental as the tenant was unable to use the intercom to allow access for guests. Instead, the tenant and their guests had to buzz the building managers for access. The tenant feels that the

landlord had unreasonably delayed and denied the tenant's access to a facility, and that the workaround provided by the landlord was "a gross invasion of my privacy", and which the tenant found to be extremely inconvenient as the managers were sometimes not home, and the tenant's guests were subject to being screened by the managers before being allowed entry. The landlord testified that they had a reasonable explanation for the delay, and although the tenant feels that their privacy was compromised, the landlord testified that they had demonstrated that they had in fact tried everything possible to accommodate the tenant and their needs as much as possible until they could repair the issue, and that they had actually attempted to help the tenant, rather than harm them. The landlord testified that they had to investigate the issue, and it took them a significant amount of time to find a solution. The landlord testified that the intercom only allowed 10 digit phone numbers, which was the default setting. The landlord testified that they were eventually able to adjust the setting to accommodate the tenant's 11 digit phone number, which was not a standard setting. The landlord testified that they attempted to fix the issue as soon as possible, and spent over \$400.00 in order to fix the issue. The landlord testified that it took some time for them to figure out the problem in order to fix it, and accommodated the tenant the best they could until the issue was resolved.

The tenant submits that in December 2019, the tenant's partner was approached by the manager, and asked for their personal information to be added to the tenancy agreement despite the fact that the tenant's partner was simply a guest, and not an actual tenant. The tenant provided details of the events in the tenant's life that necessitated the assistance and care of the tenant's partner. The tenant testified that the landlord was served with a notice informing the tenant that their rent would be increased \$150.00 per month for the additional occupant, and that the landlord wanted to start charging the tenant's partner for a parking stall that was originally provided without additional charge. The tenant further submits that on November 18, 2020 that a survey was posted on each tenant's door requesting an update on the current occupants of each suite, but the tenant was provided with a tenancy application for the tenant's partner instead. The tenant testified that there were numerous examples of how the tenant was discriminated against, and treated differently than other tenants, including the landlord's decision to provide each tenant with a Christmas card, with the exception of the tenant. The tenant observed that "Every door had a white envelope on is as we were entering the building and I noticed this on every floor. My apartment is on the top floor furthest from the front door. When I arrived at my door there was no such white envelope to be seen anywhere."

The tenant testified that the relationship between the tenant and managers deteriorated quickly upon the tenant's decision to obtain a service dog after the tenant's family physician had strongly urged that the tenant acquire one to assist the tenant. The tenant stated that they had contacted Service Dog Canada to inquire about the steps to obtain the services of a service dog, but was informed that it was a lengthy and costly process. As the issue was urgent, Service Dog Canada suggested to the tenant acquire a puppy, and obtain the services of a trainer to train their own service dog, which is what the tenant did.

The tenant provided details of the incidents that followed, which include the tenant being told that they were not permitted to have a pet even though several other tenants in the building had pets. The tenant was served with a 1 Month Notice, which was later dismissed by an Arbitrator after the tenant disputed the 1 Month Notice. The tenant submits that they "have been relentlessly discriminated against" "for having a disability", and "subject to constant abuse" following the tenant's decision to acquire the dog, and after the tenant disputed the 1 Month Notice.

The tenant felt unfairly targeted by the landlord and their agents during this tenancy. The tenant testified that a party, whom they believed to be the managers, had contacted animal control to report that the tenant's dog was unleashed and unlicensed. The tenant submits that they were approached by a courier, who had informed the tenant that the manager had stopped the courier in order to discuss issues with the tenant, and the tenant's dog. The tenant also described an incident that took place on June 30, 2021 when the tenant was walking their sick dog, and SD had started yelling at the tenant and their dog for urinating on the rocks and sign on the property.

In addition to the discriminatory treatment and harassment, the tenant feels that the landlord has failed to fulfill their obligations, such as ensuring that adequate security was provided on the property to address issues such as ongoing break-ins and incidents that happened to the tenant's vehicle and motorcycle, which included theft, vandalism and break and enter. The tenant feels that the landlord could have taken more and better steps to address these matters, but did not.

The landlord denies any claims of discrimination or harassment, and argues that the tenant has failed to establish that the landlord has contravened the *Act* in any way, or has failed to fulfill their obligations. The landlord also disputes the amount claimed by the tenant, and argues that this amount is not substantiated or supported in any way.

The landlord argued that they had the right to serve the tenant with a 1 Month Notice, and although the 1 Month Notice was cancelled by the Arbitrator, this does not support that the landlord had acted in a manner contrary to the *Act* and tenancy agreement. The landlord acknowledges that they were not successful in obtaining an Order of Possession pursuant to that 1 Month Notice as they failed to properly support that the tenant had breached a material term of the tenancy agreement, but notes that the tenant still had breached a term of the tenancy agreement, namely the failure of the tenant to obtain permission to acquire and keep a pet. The landlord argued that the tenant has continuously contravened the tenancy agreement and rules during this tenancy, which the landlord had an obligation to address. The landlord argued that they had valid concerns as the tenant failed to abide by the rules of conditions of the tenancy such as keeping the dog leashed in common areas, and by allowing the dog to urinate in prohibited areas of the property. The landlord also argued that it was common practice to request information when they believe additional occupants have been residing in the rental unit longer than 14 days, which they determined the tenant's partner had.

The landlord responded that they were unable to place security cameras in every public area, and that they did install more cameras on the property. The landlord notes that the tenants are informed to not keep valuables inside their vehicles, and that the tenants do so at their own risk.

The landlord also denies allegations of discriminatory behaviour, and disputes that the tenant was treated unfairly or differently than other tenants. The landlord argued that the tenant was in fact provided with a Christmas card along with the other tenants.

Analysis

I must first note that the tenant references allegations of discrimination that took place during this tenancy. Although the *Residential Tenancy Act* does allow tenants to file an application in relation to disputes between landlords and tenants, matters that pertain to discrimination, even within a tenancy setting, do not fall under the jurisdiction of the RTB. The British Columbia Human Rights Tribunal exists to hear these complaints, and I decline to make any findings in relation to any allegations of discriminatory behaviour that took place during this tenancy.

I will now consider the tenant's monetary claims for loss of quiet enjoyment caused by the landlord and their agents.

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.

Section 28 of the *Act* addresses the 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:

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- (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.

I have considered the testimony and submissions of both parties, and I find that a significant amount of interaction has taken place between the tenant and the landlord's agents during this tenancy, as documented by the tenant. I am not satisfied, however, that the evidence presented supports that the landlord or their agents have contravened the *Act* in a manner that has caused the tenant a loss in the amount claimed.

It was undisputed that the landlord had attempted to end the tenancy by serving the tenant with a 1 Month Notice, and was unsuccessful. In consideration of the evidence before me, I do not find that the landlord had contravened the *Act* in doing so. Although the landlord was unsuccessful in the hearing, the failure of the landlord to satisfy the Arbitrator that an Order of Possession is justified does not necessarily mean that the landlord had abused the process, or had harassed the tenant with a baseless Notice. The landlord could be unsuccessful for multiple reasons, and in this case I find that the landlord had failed to establish that the pet policy was a material term. I am not satisfied that the tenant had established that the landlord had attempted to use the process of ending a tenancy as a tactic to harass the tenant.

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 and their agents constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffer a loss in the amount claimed. I find that the landlord had provided reasonable explanations for many of the issues that the tenant had described in their application such as the delay in addressing the intercom issue. I find that the situation was an unusual one where the tenant had a phone number that was not compatible with the default settings. I find that while awaiting a resolution or repair, the landlord had attempted to accommodate the tenant through an alternative solution. Although I recognize that this alternative was not compatible with the tenant's needs or expectations, I find the landlord's actions demonstrate that they

had attempted to fulfill their obligations to provide the tenant with the adequate services and facilities, rather than remove or reduce them. I find that upon figuring out a solution, the landlord had undertaken the appropriate steps to provide the tenant with the service.

I also note that several of the incidents described by the tenant such as the urination on the property by the tenant's dog, and allowing the dog to be unleashed and unlicensed, were in fact possible violations of the bylaws that the tenant was bound by. As the landlord has an obligation to address these types of issues, I do not find that the tenant has justified the allegations of harassment on part of the landlord. I find the landlord and their agents were simply fulfilling their duties. As noted above, complaints of discrimination do not fall under the jurisdiction of the RTB.

The tenant notes the failure of the landlord to provide the tenant with certain services such as adequate security. Although I sympathize with the tenant that they did suffer multiple incidents that involved the vandalism and theft of their personal belongings on the property, I am not satisfied that the tenant had established that the losses suffered by the tenant were due to the landlord's actions, or failure to provide proper security. I am not satisfied that the tenancy agreement entered into by both parties includes a specific level of security by the landlord, such as a minimum amount of security cameras. In the absence of any such agreements, the onus is on the landlord to provide the tenant with the standard services and facilities which are part of the standard tenancy, which I find the landlord has provided.

Lastly, I note the tenant's concerns that the landlord and their agents had specifically and intentionally targeted the tenant, and acted in a manner that would constitute harassment. In consideration of the evidence before me, although some of the described behaviour on part of the managers could be considered unprofessional in nature, such as yelling at the tenant and their dog, or discussing personal issues that relate to the tenant, I am not satisfied that the allegations of harassment are sufficiently supported in evidence, and definitely not to the extent that justifies the monetary claims made by the tenant. As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I find that the tenant failed to support how they had calculated the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the losses the tenant is seeking in this application. Furthermore, I find that the tenant failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlord or their agents. On this basis I dismiss the tenant's entire monetary claim 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: March 8, 2022

Residential Tenancy Branch