Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trafalgar Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenants on September 15, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement; and
- Recovery of the filing fee.

An Amendment to the Application (the Amendment) was subsequently filed by the Tenants on March 10, 2022, seeking to add a $35,000.00 claim for monetary loss or other money owed.

The hearing was originally convened by telephone conference call on January 31, 2022, at 11:00 AM (Pacific Time) and was attended by the Tenant T.L. and an agent for the property management company hired by the corporate Landlord, T.W. (the Agent). All testimony provided was affirmed. The hearing was subsequently adjourned, and an Interim Decision was issued on February 2, 2022. The reconvened hearing was set for 9:30 AM on Friday April 22, 2022, and the parties were sent a copy of the Interim Decision and the new Notice of Hearing by e-mail on February 3, 2022. However, the hearing had to be rescheduled to 1:30 PM on May 12, 2022, by the Residential Tenancy Branch (the Branch), due to an unexpected and unavoidable absence on my part. The parties were sent a new Notice of Hearing for May 12, 2022, by e-mail on April 22, 2022. The second hearing was convened by telephone conference call on May 12, 2022, at 1:30 PM and was attended by the Tenants T. L. and J. M., and two agents for the Landlord S.S. and T.W. (the Agents).

The parties were advised at both hearings that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all of the documentary evidence before me which was accepted for consideration in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the parties, copies of the Decision and any Orders issued in their favor will be emailed to them at the e-mail addresses listed in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenants stated that they served the Amendment on the Landlord(s) on March 10, 2022, and the Agents confirmed receipt. As the Agents acknowledged receipt and raised no concerns with regards to service method or date, and the service date was more than 14 days before the date of the reconvened hearing, I find that the Tenants complied with rule 4.6 of the Rules of Procedure and I therefore amend the Application to include a $35,000.00 claim for compensation for monetary loss or other money owed.

Preliminary Matter #2

At the hearing the Tenants stated that they re-served the Landlord(s) with the documentary evidence previously submitted for my consideration, as well as new documentary evidence, including a USB drive with audio and video recordings, on April 1, 2022. As the Agents acknowledged receipt and raised no concerns with regards to service method or date, I have accepted this documentary evidence for consideration. No documentary evidence was submitted on behalf of the Landlord(s) for my consideration.

Preliminary Matter #3

The Agents stated that they had questions about the legality and admissibility of some of the digital evidence submitted by the Tenants, specifically a recording of a conversation that occurred with the Tenants in a hallway of the premises in which the rental unit is located. I advised the party that pursuant to section 75 of the *Act,* the rules of evidence do not apply, and the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate, and relevant to the dispute resolution proceeding. I also advised the parties that one-party-consent is legal in British Columbia, meaning that recordings of conversations are legal as long as one of the parties that are a part of the conversation being recorded have consented to the recording.

The Agents stated that they understood. I asked the Agents if they wished to raise any arguments that the recording should be excluded from consideration, and they stated no. They reiterated that they had simply had questions about the recording and its admissibility in the proceeding, which I had sufficiently answered. As such, no further action was required.

Preliminary Matter #4

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the *Act,* I could assist the parties to reach an agreement, which would be documented in my Decision and supporting Order(s).

During the hearing, the parties mutually agreed to settle a portion of the matters claimed by the Tenants in the Application as follows:

- The parties agree that the Tenants may move from the current rental unit to rental unit E303 affective June 1, 2022.
- The parties agree that rent as of June 1, 2022, will be $1,250.00 per month.
- The parties agree that the current tenancy agreement is still in effect and is amended because of this settlement agreement with respect to only the rental unit and the amount of rent due each month.

The Tenants acknowledged that the change in rental unit would address their noise and safety concerns, and as a result, those portions of the Application relating to an order for the Landlord to comply with the *Act,* regulation, or tenancy agreement with regards to ongoing noise complaints and safety concerns were now resolved. I therefore proceeded with only on the remaining issues and rendered a Decision in relation to those matters under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Preliminary Matter #5

The agent S.S., who works for Boundary Mngt. Inc (the previous Landlord), as well as the property owner, stated that the property is owned by Zen Group Partnership, and that they are employed as an agent of Zen Group Partnership and Boundary Mngt. Inc. S.S. stated that property ownership has not changed since the tenancy started, and that the corporation currently named as the Landlord in the Application (Trafalgar Management Ltd.) is a property management company hired by, and acting on behalf of, Zen Group Partnership. S.S. and T.W. agreed that T.W. is an agent for Trafalgar Management Ltd.

Section 1 of the *Act* states that a "landlord", in relation to a rental unit, includes any of the following:

> (a)the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> > (i)permits occupation of the rental unit under a tenancy agreement, or
> >
> > (ii)exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement;
>
> (b)the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c)a person, other than a tenant occupying the rental unit, who
>
> > (i)is entitled to possession of the rental unit, and
> >
> > (ii)exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit; and
>
> (d)a former landlord, when the context requires this.

I find that both the property management companies Trafalgar Management Ltd. and Boundary Mngt. Inc., as well as the owner of the rental unit, Zen Group Partnership, are landlords under section 1 of the *Act*. As Agents of all Landlords acknowledged receipt of the Application, the Amendment, and the documentary evidence before me from the Tenants, and as none of the parties raised any objections or concerns, the Application was therefore amended to also include Zen Group Partnership and as Boundary Mngt. Inc., as a Landlord(s)/Respondent(s).

Issue(s) to be Decided

Are the Tenants entitled to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement with regards to the state of decoration and repair of common areas?

Are the Tenants entitled to $35,000.00 in compensation for monetary loss or other money owed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on December 1, 2016, that rent in the amount of $1,000.00 was due on the 1st day of each month at the start of the tenancy, that rent includes heat and hot water, and that a security deposit in the amount of $500.00 was required. The parties agreed that a different landlord, the corporation originally named as the landlord by the Tenants in the Application (Boundary Mngt. Inc), was the Landlord at the start of the tenancy, and that the current Landlord (a property management company named TRAFALGAR MANAGEMENT LTD.) took over the tenancy at some point after its commencement. The Agent T.W. stated that they began acting as an agent for the current Landlord approximately six months prior to the date of the second hearing.

The Tenants sought an order that the Landlord comply with section 32(1) of the *Act*, which states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The Tenants stated that the carpets in the

common areas of the building have been neglected, and that as the building is pet friendly, this is unhygienic. The Tenants stated that the carpets smell as pets urinate and defecate on the carpet, which is not regularly cleaned. The Tenants stated that they do not think that the property is being properly maintained even though the owner of the property appears to have made approximately $42 million annually, and that although they know the new management has a lot on their plate, they still need to maintain the property. The tenants proposed that the carpets in the common areas of the building be vacuumed weekly and shampooed regularly, which the Tenants suggested would be approximately every three weeks.

The agent T.W. acknowledged that the carpets needed to be cleaned but expressed that this was neither their, nor the Landlord(s)'s top priority. When I asked T.W. when they thought the carpets would be cleaned, they stated that they could not give me a time frame as how and when to clean the carpets was not solely their decision and they were not sure when they would get a budget to do this.

The Tenants also sought compensation in the amount of $35,000.00 for breaches to sections 32 and 28 of the *Act* on the part of the Landlord and or the Landlord(s)'s Agents (past and present). The Tenants stated that the Landlord(s) and their Agents were neglectful in their duties under the *Act*. They stated that they did not feel safe in the building, that the common areas of the building were not kept clean, and their right to quiet enjoyment of their rental unit was significantly impeded by a repeated lack of action on the part of the Landlord(s) and/or the Landlord(s)'s Agents to address their ongoing noise complaints and other concerns. The Tenants stated that their tenancy commenced in December of 2016 and that the noise disturbances started soon after. the Tenants stated that they sent their first written complaint regarding the noise disturbances on approximately April 17, 2017. The Tenants stated that although they repeatedly requested that the previous property management company deal with the noise disturbances, little to no action was taken and they were chronically disturbed by noise primarily originating from two rental units, one of which was on the floor above them and one of which was on the floor below them. The Tenants stated that they were also verbally assaulted and threatened by other occupants of the building, and that one of them was physically assaulted by another occupant of the building in April of 2020, when they attempted to address a noise complaint with the occupant as encouraged by the Landlord(s) or the Landlord(s)'s agents.

The Tenants provided me with the police file number for the police report filed in relation to this incident, and although the Tenants acknowledged that the assailant has been

evicted, the Tenants stated that they still come to the building to visit other occupants. The Tenants stated that this causes them fear and anxiety, and that neither the Landlord(s) nor the Landlord(s)'s agents have done anything to stop this. The Tenant T.L. stated that the other Tenant J.M. has a brain tumor, and that because of the Landlord(s)'s repeated failure to address their noise complaints and safety concerns, both they and the Tenant J.M. have suffered a significant loss of quiet enjoyment, repeated loss of sleep, deterioration of their mental and physical health, stress, and loss of employment. The Tenants stated that they arrived at the $35,000.00 valuation for their claim as this is approximately what T.L. was previously earning per year, prior to suffering from major depressive disorder which was brought on or exacerbated by the continual noise disturbances and safety concerns, resulting in a loss of employment. The Tenants stated that this claim also covers a long period of time, and therefore the $35,000.00 valuation is appropriate under the circumstances, given the repeated nature of the breaches by the Landlord(s) and/or the Landlord(s)'s agents, the significant duration of the issues and the significant hardships and losses suffered by the Tenants as a result.

The Tenants stated that they attempted to mitigate their losses by repeatedly bringing forward complaints both verbally and in writing to the Landlord(s)'s agents and requesting on multiple occasions that they be moved to another comparable rental unit in the building. The Tenants stated that despite the above the Landlord(s) and/or the Landlord(s)'s agents refused their requests to move to a comparable rental unit at the same rental price and simply took no action or insufficient action with regards to their complaints. The Tenants submitted and pointed to a considerable amount of documentary evidence, including but not limited to audio and video recordings, photographs, copies of written complaints to and communications with, the Landlord(s)'s agents, written summaries, submissions, timelines, and arguments.

The agent S.S. stated that a previous agent for the Landlord, who was the building manager, did not forward the Tenants' complaint letters to head office, and therefore the Landlord was not aware of the issues until August of last year. With regards to the assault in April of 2020, S.S. stated that they do not know why the Tenants chose not to press charges and are confused about why, after not pressing charges, they are expecting the Landlord(s) to address this matter when it is rightfully a matter for the police. S.S. also stated that they attempted to rectify the situation immediately upon becoming aware of it last August, and that although the Tenants were offered other comparable one-bedroom units in the building, the Tenants did not want to accept these units as instead of wanting a comparable rental unit, they actually wanted a larger two-

bedroom rental unit but at the same rental price as they were paying for their current one-bedroom rental unit.

T.W. stated that they cannot speak to anything that went on prior to their employment with the Landlord, which commenced approximately 6 months ago. T.W. acknowledged that there were disruptive tenants in other suites but they denied the Tenants' allegation that they have not done anything to address this. T.W. stated that they use a "3 strikes kind of method" where they use 3 escalating levels of written notice, which increase in sternness/consequences at each subsequent level, and that after the third notice, any subsequent continuation of the issue will result in service of a notice to end tenancy. T.W. stated that although notices to end tenancy were issued to the occupants of two of the rental units that the Tenants have complained about, and that they have obtained an order of possession for one of those rental units, the occupant of that rental unit is fighting that decision and may file either a review consideration or a judicial review. T.W. stated that as they have acted reasonably with regards to the Tenants' noise complaints since they became employed by the Landlord 6 months ago, they do not believe that the Tenants should be entitled to any compensation.

In response the Tenants stated that it was not their job to contact head office directly as the previous building manager was the contact person for the Landlord(s), and that the failure of the former building manager to properly forward their complaints to head office is not their fault. They also stated that their choice not to file criminal charges against the occupant of the building regarding the physical assault so as not to further victimize them, does not change either their rights or the Landlord(s)'s obligations under the *Act*. S.S. disagreed, stating that the Tenants' argument does not make sense as they do not want the other occupant to take responsibility for their actions but expect compensation from the Landlord.

Analysis

Based on the documentary evidence and testimony before me for consideration, I am satisfied that a tenancy to which the *Act* applies, exists between the parties. Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Based on the photographs before me from the Tenants and the testimony of the parties, I am satisfied on a balance of probabilities, that the Landlord(s) and/or their agents are in breach of section

32(1) of the *Act,* with regards to the common areas of the building in which the rental unit is located.

Section 62(3) of the *Act* states that the director make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations, or a tenancy agreement, and an order that the *Act* applies.

Pursuant to sections 32(1) and section 62(3) of the *Act*, I therefore Order the Landlord(s) and/or their agents to have the carpets and common areas of the building professionally cleaned as soon as reasonably possible and not later then 30 days after the date of this decision. This cleaning must include but is not limited to, vacuuming and shampooing of all of carpeting in common areas of the building, and sweeping and mopping of any non-carpeted flooring in the common areas of the building, including stairs. I also Order the Landlord(s) and/or their agents to comply with section 32(1) of the *Act* by regularly maintaining in a clean and sanitary condition, and repairing, if necessary, the flooring in common areas of the building in compliance with the *Act* and any applicable municipal by-laws regarding standards of maintenance. For the purposes of this order, “regularly maintaining in a clean and sanitary condition” shall mean the vacuuming of all carpets and the sweeping and mopping of all non-carpeted flooring in common areas of the building not less than once every week, professional shampooing of all carpets in the common areas of the building not less than once every year, and spot-cleaning of the carpets and flooring as necessary in-between, and as often as required, to keep them in a clean and sanitary condition.

I will now turn to the Tenants’ $35,000.00 monetary claim. In reviewing the substantial documentary evidence provided for my review and consideration by the Tenants, including numerous written noise and other complaints starting in April of 2017, and audio and video recordings, and in consideration of the testimony provided by the parties at the hearings, I am satisfied on a balance of probabilities that the Landlord(s) and/or their agents, failed to protect the Tenants’ right to quiet enjoyment of their rental unit including, but not limited to, freedom from unreasonable disturbance. Although the Tenants argued that a loss of employment by one of the Tenants was suffered as a result, along with the development of major depressive disorder, I find that the documentary and other evidence submitted for my consideration by the Tenants falls significantly short of establishing that this is the case, even on a balance of probabilities. Nevertheless, I am satisfied that the Tenants have suffered ongoing loss of quiet enjoyment of their rental unit due to noise and other disturbances by other occupants of

the building and/or their guests, since approximately December of 2016. I am also satisfied that despite having known about these noise disturbances since April of 2017, the Landlord(s) and/or their agents have repeatedly failed to act diligently and reasonably to address these issues, or to protect the Tenants' right to the quiet enjoyment of their rental unit as required under section 28 of the *Act,* despite numerous attempts by the Tenants to have them do so. Further to this, I am satisfied that the Tenants suffered a lack of enjoyment and a devaluation of their tenancy as a result of the lack of cleanliness in common areas of the building.

Although the Tenants sought $35,000.00 in monetary compensation, in light of the fact that I am not satisfied that the above noted loss of quiet enjoyment resulted in the mental health condition and loss of employment claimed by the Tenants, I do not find this amount to be either reasonable od appropriate. Given the significant devaluation of the tenancy I find was caused by the Landlord(s)'s failure to protect the Tenants' right to quiet enjoyment, the repeated nature of the noise disturbances suffered by the Tenants, and the significant period of time over which the breaches to sections 28 and 32 of the *Act* by the Landlord(s) and/or their agents occurred, I find that compensation in the amount of $12,400.00 to be reasonable and appropriate, which represents $200.00 per month between April 2017 when the Landlord(s) and/or their agents first became aware of the noise disturbances, and May 31, 2022, as the Tenants are moving to another rental unit in the building by mutual agreement on June 1, 2022, which they agreed at the hearing will resolve the ongoing noise complaint issues.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **$12,400.00**. The Tenants are provided with this Order in the above terms and the Landlord(s) must be served with this Order as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of enforcing the Monetary Order, the Tenants may deduct this amount from rent due under the tenancy agreement, should they wish to do so.

Pursuant to section 63 of *Act*, the Tenants are permitted to move to rental unit E303 as early as June 1, 2022, for a monthly rent amount of $1,250.00, and the existing tenancy agreement is considered to have been amended to update the rental unit number and the monthly rent amount as per the settlement agreement.

Pursuant to sections 32(1) and section 62(3) of the *Act*, I Order the Landlord(s) and/or their agents to have the carpets and common areas of the building professionally cleaned as soon as reasonably possible and not later then 30 days after the date of this decision. This cleaning must include but is not limited to, vacuuming and shampooing of all of carpeting in common areas of the building, and sweeping and mopping of any non-carpeted flooring in the common areas of the building, including stairs. Pursuant to sections 32(1) and section 62(3) of the *Act*, I also Order the Landlord(s) and/or their agents to adhere to the cleaning schedule noted in the analysis section of this decision.

The parties should be aware that if the Landlord(s) and/or their agents fail to comply with any of the above Orders, the Tenants may be within their rights to file a subsequent Application with the Branch seeking enforcement of the Order(s), and compensation from the Landlord(s) for any losses suffered because of their failure to comply with them. The Landlord(s) should also be aware that failure to comply with the *Act* and/or Orders of the Branch could also result in administrative penalties under part 5.1 of the *Act*, in an amount up to $5,000.00 per day for each day the contravention or failure continues.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: June 30, 2022

Residential Tenancy Branch