



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

This hearing dealt with the tenant's application, filed on March 23, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- a monetary order of \$3,800.00 for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The two landlords, "landlord BL" and "landlord GL," the landlords' agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 38 minutes from 9:30 a.m. to 10:08 a.m.

The two landlords, the landlords' agent, and the tenant all confirmed their names and spelling. The landlords' agent and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The two landlords (collectively "landlords") confirmed that their agent had permission to speak on their behalf at this hearing. The landlords' agent identified herself as the primary speaker for the landlords at this hearing. She said that the two landlords are her parents.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the two landlords, the landlords' agent, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 71(2)(c) of the *Act*, I find that both landlords were duly and sufficiently served with the tenant's application.

I informed both parties that I would consider the tenants' application and evidence at this hearing and in my decision, even though the landlords' agent confirmed that the landlords received the above documents under their door, which she said was not a proper service method. The landlords' agent confirmed that the landlords received and reviewed the tenants' application and evidence, so I find that both landlords were sufficiently served, as per section 71(2)(c) of the *Act*. I find that the landlords were unable to show prejudice, even though they were not served in accordance with section 88 of the *Act*. The landlords and their agent were given an opportunity to provide submissions if they wanted to request a delay or adjournment of this hearing. The landlords' agent confirmed that the landlords did not want to delay this proceeding because they wanted to proceed and obtain closure.

The landlords' agent stated that the landlords could not serve their evidence to the tenant because the tenant did not provide a forwarding address. The tenant said that she was homeless and could not provide an address to the landlords. She stated that the landlords could have emailed her, but she did not provide her email address for service to the landlords as per the *Act* or *Regulation*.

I informed the landlords and their agent that I could not consider the landlords' evidence at this hearing because it was not served to the tenant, as required by section 88 of the *Act* and Rule 3.15 of the RTB *Rules*. The landlords and their agent were given an opportunity to provide submissions if they wanted to request a delay or adjournment of this hearing. The landlords' agent confirmed that the landlords did not want to delay this proceeding because they wanted to proceed and obtain closure. The landlords' agent confirmed that the landlords were ready to proceed without their evidence being considered at the hearing or in my decision.

At the outset of this hearing, the tenant confirmed that she vacated the rental unit on May 31, 2022. The landlords' agent confirmed that the landlords took back possession of the rental unit on May 31, 2022. I informed the tenant that her application for an order to comply was dismissed without leave to reapply, as this claim relates to an ongoing tenancy only. The tenant confirmed her understanding of same.

The tenant confirmed that she wanted to pursue her monetary claim only at this hearing.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2020 and ended on May 31, 2022. Both parties signed a written tenancy agreement. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. A security deposit of \$675.00 and a pet damage deposit of \$100.00 were paid by the tenant and the landlords continue to retain both deposits. The tenant occupied the basement unit of a house, where the landlords occupied the upper unit of the same house.

The tenant stated that she seeks a monetary order of \$3,800.00 in this application.

The tenant testified regarding the following facts. She had a loss of quiet enjoyment in the rental unit from the time that she moved in. There was excessive noise upstairs. The landlords looked after their grandchild and the noise would be from around 9:00 a.m. or 10:00 a.m. to about 4:30 p.m. or 5:00 p.m. The grandson would run, jump, bang, stomp, cry, and yell. The tenant tried to tolerate the noise, but it was too much. The landlords would bang the front and garage doors and let the door swing closed, which would move the entire house because it was so strong. The tenant had problems with two floods at the rental unit. One happened upstairs and flooded the tenant's kitchen and light fixture and the tenant was not given any compensation. The tenant lost dry goods that were in glass containers on her counters. The second time the

kitchen flooded due to the dishwasher. The sink overflowed and the tenant had to run back and forth to dispose of the kitchen sink water. The landlords had to pay for plumbing but acted as if it was the tenant's fault. The plumber said that the place was not up to code and that is why the kitchen flooded. The noise coming from the landlords' kitchen was so loud, as there was banging, and the tenant thinks that landlord BL was crushing spices. The main problem was the grandchild, and the landlords would not send him outside to play. The landlords let him run in the house above the tenant and he would stomp on the floor that was above the tenant's bedroom. The noise was "disruptive, disturbing," and caused "a lot of grief" for the tenant. When the tenant would "hint" or say anything to the landlords, they said that their grandson was a little boy who ran around.

The landlords' agent testified regarding the following facts. The landlords received a loss of quiet enjoyment letter from the tenant, dated March 16, 2022. The tenant provided this letter after she was served with a ten day notice to end tenancy for unpaid rent ("10 Day Notice") by the landlords. The tenant wanted the landlords to cancel the notice and the tenant initiated a dispute at the RTB. The tenant told the RTB to call the landlords. The tenant was worried that she would have to leave the rental unit right away and she used the letter to help her. The landlord lowered the rent for the tenant, it was a one-bedroom unit. The landlords understood the tenant had a hard time with money. However, the tenant did not pay her rent on time, and this caused problems for the landlords, who are seniors with health issues. The landlords watch her nephew and keep him active. The tenant said she loved living at the rental unit. The tenant kept asking the landlords not to let her go and to cancel the dispute. The landlords would send text messages asking if the tenant was okay and landlord BL gave food to the tenant. It was difficult for the landlords because the tenant did not pay rent on time. During the leak, the landlords called the plumber right away.

The landlords' agent stated the following facts. The landlords hope that the tenant's family can help her because she is homeless, and they feel bad for her. The tenant created the letter regarding the loss of quiet enjoyment for her own financial benefit. The landlords used to call the tenant before they would come over and they treated the tenant with respect, and they hope that she finds affordable housing. The landlords are willing to help the tenant understand she was lonely because her cat passed away. The noise from the landlords' grandson was daily day-to-day activity, he would come over three times a week, and it was reasonable noise. The landlords were trying to help her brother and they would babysit to help him with his financial situation. The landlords put their grandson out on the deck. The landlords treated the tenant like family when she came from across the street. Landlord BL said that the tenant was like her sister. The

tenant said she never wanted to leave to the landlords. Both parties mutually agreed that the tenant would have two months longer to move out after the March 18 RTB hearing. The tenant was given until May 31, 2022, to find affordable housing. The previous RTB decision from March 2022 ordered the tenant to pay full rent for April and May, but the tenant breached this agreement.

Landlord GL said that the tenant left the rental unit in a big mess when she moved out and she did not pay rent for April or May 2022 to the landlords.

The landlords' agent stated the following facts. The tenant did not clean when she moved out of the rental unit. The tenant agreed for the landlords to keep her security and pet deposits, totalling \$775.00, towards the unpaid rent. The tenant did not respond or provide the rest of April or May 2022 rent to the landlords and the landlords did not pursue her further for this. The landlords called the RTB, who told them that they could get the tenant out right away on April 1, 2022, but the landlords let her stay until May 31, 2022. The tenant is trying to take advantage of the landlords who are seniors and struggling and they count on the rent money. Landlord GL had a heart attack last year and his heart medicine is not cheap, and the tenant knows that landlord BL is not doing well. The tenant altered the loss of quiet enjoyment letter to add compensation and provided this letter after with this application.

Landlord BL stated that the tenant did not communicate with the landlords and the tenant was trying to hide when she put her application paperwork under their door.

The tenant stated the following in response. Her previous rent situation is not relevant to this application. The tenant communicated and talked to the landlords but she was "laughed off" by them.

Analysis

Burden of Proof

The tenant, as the applicant, has the burden of proof regarding this application. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the tenant to provide evidence of her claims.

The tenant received an application package from the RTB and provided copies of these documents to the landlords, as required. The tenant was provided with a "Notice of

Dispute Resolution Proceeding” (“NODRP”) from the RTB, which contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

I informed the tenant that a legal, binding decision would be issued within 30 days after this hearing date. This information is contained in the NODRP above. The tenant confirmed her understanding of same.

The tenant was provided with a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support the application, and links to the RTB website. It is up to the tenant to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenant, as the applicant, to provide sufficient evidence of her claims, since she chose to file this application on her own accord.

The following Residential Tenancy Branch (“RTB”) *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the *RTB Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules of Procedure*.

Although the tenant submitted documents with her application, she failed to review or explain them at this hearing. She did not even mention the existence of these documents at this hearing.

This hearing lasted approximately 38 minutes, so the tenant had ample time to present her claims, submissions, and evidence at this hearing. I repeatedly asked the tenant if she had any other information to present and to respond to the submissions of the landlords and their agent. The tenant filed this application on March 23, 2022, and this hearing occurred over three months later on July 4, 2022, so the tenant had ample time to prepare for this hearing.

Legislation

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

28 *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 Policy Guideline 6 “Entitlement to Quiet Enjoyment” states the following, in part (my emphasis added):

*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.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

*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.*

...

D. AMOUNT OF COMPENSATION

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question.** For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's monetary application for \$3,800.00 without leave to reapply.

While the tenant found the landlords and their grandson to be loud and noisy, these complaints were not necessarily subject to intervention by the landlords. Residing in a multi-unit house, where the tenant occupies the basement unit and the landlords occupy the upper unit above the tenant, sometimes leads to disputes. A certain level of noise is to be expected, given the location of the tenant's rental unit in the basement of a house. The landlords and their family are entitled to quiet enjoyment of their unit, including completing activities of daily living and using the unit for different purposes. The tenant cannot decide how or when the landlords' unit is to be used and for what purposes. The rights of both parties must be balanced.

I find that the noises from the landlords and their grandson were reasonable noises from activities of daily living. I find that the noises referenced by the tenant is a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6,

above. I find that the tenant failed to provide sufficient evidence of a loss of quiet enjoyment. The tenant did not indicate specific dates when the noise violations occurred, when she notified the landlords, what actions she took, or other such information. She did not review or reference any of her documents submitted for this hearing. She simply stated that the noise began when she moved into the rental unit in August 2020. However, the tenant continued to occupy the rental unit, for almost two years from August 1, 2020 to May 31, 2022, despite the noises.

It is undisputed that the tenant continued to occupy the rental unit even after she received a notice to end tenancy from the landlords and filed an RTB dispute regarding same. It is undisputed that the landlords allowed the tenant to vacate the rental unit on May 31, 2022, even though the tenant did not pay full rent for April or May 2022 to the landlords. The landlords questioned why the tenant waited until March 16, 2022, to submit a letter regarding a loss of quiet enjoyment to them, but the tenant did not respond, despite being given an opportunity to do so, during this hearing. The tenant claimed that she communicated with the landlords but they "laughed it off." However, the tenant did not provide specific dates or details regarding same.

I find that the tenant failed to provide sufficient and timely notice of a breach of quiet enjoyment to the landlords so that they could attempt to correct the issue in a reasonable and timely manner. The tenant indicated that the noise began when she moved into the rental unit, which was August 1, 2020, but she did not provide a letter or notice to the landlords until March 16, 2022 (which the tenant did not review or mention at all during this hearing), shortly before moving out on May 31, 2022. The tenant did not indicate that she filed any previous RTB applications or attended any previous RTB hearings regarding the loss of quiet enjoyment issue.

The landlords indicated that the loss of quiet enjoyment letter was received after they served a 10 Day Notice to the tenant first and the tenant filed an RTB application disputing same. The tenant did not dispute same at this hearing. The landlords provided a copy of the previous RTB decision, dated March 18, 2022, after a hearing occurred on the same date before a different Arbitrator. That previous RTB file number appears on the front page of this decision. I reviewed the previous RTB decision, which indicates that the tenant filed an application to cancel a 10 Day Notice, that both parties settled the application for the tenant to move out by May 31, 2022, and that the tenant was advised by the Arbitrator that rent was due and payable as per the tenancy agreement for the remainder of the tenancy. The tenant filed this application on March 23, 2022, shortly after the previous RTB hearing, settlement and decision occurred on March 18, 2022, regarding unpaid rent.

I find that the landlords made reasonable efforts to deal with the two floods at the rental unit during the tenant's tenancy. The tenant testified that the landlords hired a plumber at their own cost. I find that these events, which occurred suddenly and without notice, were a temporary discomfort or inconvenience, which does not constitute a basis for a breach of the entitlement to quiet enjoyment. I do not find that these events were frequent and ongoing interferences or unreasonable disturbances, which could form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I find that the tenant did not provide sufficient evidence to substantiate her monetary claim for \$3,800.00 and she failed to satisfy the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

During this hearing, the tenant did not indicate how she arrived at the above monetary amount, she did not provide a monetary breakdown, she did not review any of her documents, and she did not indicate sufficient evidence regarding her claims. The tenant was given ample and multiple opportunities during this hearing to present her application and evidence and respond to the landlords' claims. The tenant provided a monetary order worksheet with her application, but she did not mention or review this document at all during this hearing. The monetary order worksheet simply states "loss of quiet enjoyment complaint" with a total amount of \$3,800.00 but does not provide any other information or a breakdown of the above amount.

Conclusion

The tenants' 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: July 04, 2022

Residential Tenancy Branch