



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avesta Strata & Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

DB attended as agent for the landlord ("the landlord"). The tenant DB attended for both tenants ("the tenant"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. Neither party called witnesses.

1. Preliminary matter – service of Decision

The parties provided the email addresses to which this Decision shall be sent.

2. Preliminary matter – recording

The parties confirmed they were not recording the hearing.

3. Preliminary matter – application for adjournment

At the outset of the hearing, the landlord applied for an adjournment of the hearing. After discussion, the landlord agreed to proceed with the hearing, to acknowledge service, and to withdraw the application. Accordingly, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

This is an application by a tenant for a monetary order and reimbursement of the filing fee. The landlord requested the application be dismissed without leave to reapply.

The tenant claimed loss of quiet enjoyment for a 3-month tenancy during which time the unit contained an odour of animal urine, requiring the tenant to move out after 3 months. The tenant claimed compensation of 50% of rent paid and reimbursement of a carpet cleaning fee of \$158.00.

A copy of the tenancy agreement was submitted. The parties acknowledged the tenancy was for a fixed term and the landlord agreed the tenant could move out early. Rent was \$2,000.00 a month. A security deposit was provided at the beginning of the tenancy and the parties agreed on the return at the end of the tenancy.

The duration of the tenancy was three months of September, October and November 2021.

Tenant's claim

The tenant testified as follows. When they moved in, there was a smell of animal urine which persisted throughout the 3 months of the tenancy. The tenant said the smell was apparent during the inspection on moving in. A copy of the signed condition inspection

report was submitted which states there is a “smell of dogs”. At the time, the landlord said the smell would go away.

However, the tenant testified the smell persisted. The tenant raised the issue with the landlord. Even though the carpet had been cleaned before moving in, the landlord paid to have the carpet cleaned a second time, a week after moving in.

Even then, the tenant found the smell persisted and they asked to have the odor removed by other means.

As the landlord refused to pay for a third carpet cleaning, the tenants paid \$158.00 to have the job done. The tenant submitted an invoice for this third cleaning which took place on September 14, 2021. The invoice for \$158.00 states the cleaner noticed a pet odor on entry and suggested the smell may not go away until the carpet underlay was replaced. The tenant testified the smell did not go away and persisted unchanged.

The tenant testified to an inspection of the carpet. In October 2021, the tenant asked EK of a carpet company, who eventually replaced the carpet, to inspect the carpet. EK came, observed a stain on the underlay, and suggested the smell would not go away until the carpet was replaced. EK suggested the stained portions be cut out and placed on the deck. The tenant submitted pictures of the stain EK observed.

The landlord called EK as a witness. EK could not recall the conversation with the tenant. He testified that if a carpet continues to smell of urine after cleaning, a likely solution is to replace the carpet. Another solution was to provide better circulation and different treatment.

The tenant said the odor was unrelentingly nauseating. He described wanting to vomit from the smell. The tenant closed the two carpeted rooms in the unit, an office and a bedroom, and put tape around the doors to stop the smell from getting into the living room which had a hard floor. The couple slept and lived in the kitchen and living room. The carpeted rooms were unusable and were not occupied by them. The tenant submitted supporting pictures of the living arrangement.

The tenant said the landlord was uncooperative and unhelpful. They described the difficulties. The landlord was “mean spirited”, rude, took pictures without permission, and on one occasion was asked to leave the unit because of her unacceptable

behaviour. The landlord acted “unethically” in failing to make the unit liveable and living up to the landlord’s obligations.

The tenant described the deteriorating relationship with the landlord as they sought action to solve the problem. The tenant submitted copies of many emails to the landlord requesting they do something to remove the odour. For example, on October 14, 2021, they sent a written request to the landlord, a copy of which was submitted. The reply of the landlord was that the underlay would be replaced on the condition that the tenant pay for the expense if no odor was detected. The tenant rejected the offer.

The tenant said they could not take the stress anymore. They gave up hope of reaching a solution with the landlord. They provided notice at the end of October 2021 that they were moving out at the end of November 2021. They vacated mid-November.

Landlord’s reply

The landlord testified as follows.

The landlord acknowledged that the previous tenant had a dog. They acknowledged the unit had some odor when the tenant moved in. However, the smell was not that bad, it disappeared in a couple of weeks, and the landlord did everything reasonable and sensible to solve the problem in a timely manner. The tenant was a constant complainer for no valid reason.

The landlord testified the carpet and underlay were eventually replaced after the tenant moved out. This was not because there was anything wrong with the carpet but because the landlord was tired of the tenant’s constant complaining.

The landlord expressed the opinion that the tenant themselves were responsible for any lingering odour by not leaving windows open. The tenant replied they were instructed to turn the heat up and close the windows so the carpet could dry after each cleaning, which they did.

Summary

The tenant requested compensation of \$3,000.00 being 50% of the rent paid, payment of the carpet cleaning of \$158.00, and reimbursement of the filing fee.

The landlord requested the tenant's application be dismissed in its entirety without leave to reapply.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Burden of Proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Policy Guideline 1 - Landlord and Tenant – Responsibility for Residential Premises states in part as follows:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

Sections 7, 65 and 67 address compensation as follows:

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.

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

- (a)...
- (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
- (c) that any money paid by a tenant to a landlord must be
 - (i) repaid to the tenant,
 - (ii) deducted from rent, or
 - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;
- ...

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Quiet Enjoyment

The tenant's claim for damages is for compensation for loss of quiet enjoyment.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

22. 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.

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows (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.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the **seriousness of the situation** or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the **length of time** over which the situation has existed.

[emphasis added]

Credibility

I have considered evidence submitted by both parties. I find the tenant's testimony to be the more credible. As he lived in the unit, I find his description of the conditions to be direct, accurate and believable. His testimony was well supported by photographs and documentary evidence. I do not accept the landlord's evidence that the tenant's claim was manufactured, overstated or exaggerated. I find the tenant's version of events to be reliable.

I find the landlord's account to be less dependable. The landlord's denial of all responsibility and assertion they made all reasonable efforts are not credible in the circumstances as I understand them.

Therefore, I prefer the tenant's version of events. Where their evidence differs, I give greater weight to the tenant's testimony.

Findings – Loss of quiet enjoyment

Considering the testimony and evidence, the Act, and pursuant to *Policy Guideline 6*, I find as follows.

I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment as the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently to assure the tenant had a unit free of disturbing odour from the previous owner's dog's urine.

I accept the tenant's credible evidence and find the smell of dog's urine was a significant intrusion and disturbance on their day to day lives. The odour was so significant it was substantial interference with the ordinary and lawful enjoyment of the premises. I find this interference persisted throughout the three months of the tenancy. I also find the landlord was aware of the interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The first documentary evidence in which the landlord acknowledged the smell was on move in when the odor was noted in the submitted Condition Inspection Report.. I accept the landlord was provided with notice that day and that the odour persisted with no significant change for the duration of the tenancy.

I do not accept as reasonable that the tenant had to live in an area half the size of the unit because of the smell in the other half. I find the landlord failed to take reasonable steps to fix the odour and to assure the tenant could live comfortably in the entire unit.

I accept the tenant's testimony describing their subjective experience as very uncomfortable. I believe the tenant when he stated he was sickened and disgusted by the odour. I accept the tenant's description as factual of all aspects of the conditions of the unit while odour persisted throughout the tenancy. I find it reasonable the tenant would close off the two carpeted rooms and live solely in the living area.

I accept the tenant's evidence that they did everything possible to mitigate the situation. The correspondence indicates clear and persistent requests by the tenant to the landlord to take steps to correct the problem. When the landlord refused to take further action, the tenant reasonably tried one more cleaning of the carpet.

The tenant also asked EK who worked with a carpet company to inspect the carpet. I accept the tenant's evidence of the details of their conversation. That is, I accept the tenant's credible testimony that EK inspected the carpet, detected the odour, lifted part of it and discovered a stain which he stated to be animal urine. I accept the tenant's testimony that EK recommended the stained carpet be cut out and placed elsewhere, and the entire carpet replaced.

I find the landlord did not meet their obligations under the Act to ensure that the smell of urine was eliminated, and the tenant could live in expected comfort free of unwelcome odours. I find the landlord was aware of the tenant's complaints but failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord's response to the situation to be slow, ineffective and indifferent to the tenant's

discomfort. Eventually, I accept the tenant's testimony that the landlord's response was rude and dismissive.

I find the loss of quiet enjoyment extended for the period claimed by the tenant and the level of discomfort was unvarying. The tenant made their best efforts to have the problem fixed and moved out as soon as it became apparent the landlord would not deal effectively with the problem.

I find the tenant paid rent of \$6,000.00 during the tenancy.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for a period during which the tenant paid rent of \$6,000.00. In view of all the circumstances, I find it is reasonable that the tenant receive compensation in the amount of 50% of the rent paid in this period which I find is \$3,000.00.

I grant a monetary award to the tenant in this amount.

Carpet cleaning - \$158.00

I also grant the tenant reimbursement of the cost of the carpet cleaning of \$158.00.

I find the landlord failed in their responsibility for ensuring the unit or manufactured was reasonably suitable for occupation given the intolerable odor.

I accept the tenant incurred this expense and that the cost was attributable to the landlord refusing to do anything further. The tenant made best efforts to solve the problem and properly incurred this expense. I find it reasonable the tenant would try to

eradicate the odour. I do not find the landlord's actions to be reasonable in refusing to take any further steps to solve the problem

Accordingly, I grant the tenant an award under this heading of \$158.00

Summary of Award

I grant the tenant a Monetary Order of **\$3,258.00** as follows:

ITEM	AMOUNT
Loss of quiet enjoyment	\$3,000.00
Carpet cleaning	\$158.00
Reimbursement filing fee	\$100.00
TOTAL	\$3,258.00

Conclusion

I award the tenant a Monetary Order in the amount of **\$3,258.00**. This Monetary Order must be served on the landlord. This Order may be filed and enforced in the courts of the Province of BC.

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: August 18, 2022

Residential Tenancy Branch