



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, OLC, PSF

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenants or the tenant's guests pursuant to section 70; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 10:04 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that he had personally served the landlord's agent on September 24, 2020 with their dispute resolution package sometime in February 2022. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's application and evidentiary materials. The tenant confirmed service of the landlord's evidentiary materials, which was sent to the tenant by way of registered mail on August 24, 2022. The landlord provided proof of service in their evidentiary materials. In accordance with sections 88 and 90 of the *Act* I find the tenant deemed served with the landlord's evidentiary materials, 5 days after mailing.

Issues(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

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 month-to-month tenancy began on January 1, 2005 (I note that the tenant's application states that the tenancy began on September 1, 2001, but the tenancy agreement submitted on January 1, 2005. I further note that the length of this tenancy does not impact this application.). The tenant pays monthly rent in the amount of \$345.00. A security deposit of \$250.00 was collected for this tenancy.

The tenant filed this application as they were being harassed by another tenant. The tenant confirmed that this tenant is now deceased, but prior to the passing of this tenant, the tenant applicant testified that they were harassed from July 2020 to April 2022 despite the fact that they had informed the landlord of the ongoing issues the tenant faced.

The tenant testified that it was a "nightmare" living in the building, and despite the tenant's complaints, the landlord refused to address the issues. The tenant stated that they had spent over 18 months making phone calls, and sending emails and letters to the landlord, and received no resolution. Instead, the tenant testified that they were treated rudely and received no assistance.

The tenant testified that they were unable to enjoy peaceful and quiet enjoyment of their home, and had to find alternative accommodation on many occasions. The tenant requested to be moved to a different building, but was not accommodated. The tenant

testified that the landlord should have dealt with the issue as moving was too stressful, and would aggravate the tenant's medical conditions. The tenant also requires housing within close proximity to family and medical appointments.

The tenant testified that DC was the portfolio manager who had authority to make decisions, and the tenant was not ensured a safe place to live. The tenant testified that they suffer from a medical condition that requires rest and sleep, and due to the landlord's handling of this tenancy, the tenant has been unable to rest.

Analysis

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:

- :
- (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.

In relation to the harassment from the tenant, MB, both parties confirmed that MB is now deceased. The tenant expressed significant concern and frustration, however, about the landlord's failure to address the ongoing issues the tenant faced for at least 18 months prior to the passing of MB.

I must first note that the tenant references Human Rights Code violations 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, and matters that pertain to their right to enjoy their rental unit, human rights code violation complaints 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 Human Rights Code violations that took place during this tenancy.

I also note that much of the tenant's application references the conduct, and specifically the noncompliance of the building portfolio manager. The Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a)contravened a provision of this Act or the regulations,
- (b)failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c)given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

I do accept the evidence and testimony of the tenant that they had suffered much distress during this tenancy. As noted above, the tenant MB, who was harassing the tenant applicant, is now deceased. I do note that the tenant is entitled to the quiet enjoyment of the tenant's home, free from disturbance and harassment. I do not find any orders are required under sections 65 and 70 the *Act* at this time as requested, but the tenant is at liberty to reapply if the tenant feels that the landlord has failed to comply with the *Act*. The tenant's application is therefore dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed with 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: October 5, 2022