



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 14, 2022, wherein the Tenant sought monetary compensation in the amount of \$20,689.00 from the Landlords.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on September 20, 2022. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlords did not call into this hearing, although I left the teleconference hearing connection open until 1:56 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlords did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlords with the Notice of Hearing and the Application on February 18, 2022 by registered mail. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlords were duly served as of February 23, 2022 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation for breach of their right to quiet enjoyment including aggravated damages?
2. Is the Tenant entitled to compensation from the Landlord pursuant to section 51 of the *Act*?
3. Is the Tenant entitled to return of double the security and pet deposit paid?
4. Should the Tenant recover the filing fee?

Background and Evidence

In support of her claim the Tenant testified as follows. This tenancy began May 1, 2017. Monthly rent was \$1,050.00 and the Tenant paid a \$475.00 security deposit and a \$300.00 pet damage deposit. The tenancy ended on December 31, 2020.

The Tenant filed a Monetary Orders Worksheet in evidence in which she provided significant detail regarding her monetary claim. The claim was broken down into subcategories which she titled:

- Interferences by Next-Door Tenant;

- Interferences by Landlord;
- Eviction; and,
- Damage Deposit.

The first two categories set out her claim relate to her request for compensation for the Landlord's breach of her right to quiet enjoyment. In this respect the Tenant gave testimony as to the frequent and ongoing disruption she endured as result of her neighbour's actions, the Landlords failure to address her concerns in this regard, as well as interference by the Landlords directly.

The Tenant provided a significant amount of evidence in support of all her claims, including emails and registered letters to and from the Landlords, statements from witnesses, and audio recordings of the noise created by the neighbour. During the hearing before me, the Tenant also provided testimony as to her experiences living in the rental unit, her attempts to communicate with the Landlords about her concerns, and their failure to respond or rectify the situation. The Tenant advised that at one point in time the Landlords refused to communicate with her except by registered mail. This was confirmed in documents submitted by the Tenant.

The Tenant testified that on March 1, 2020 a new tenant, K., moved into the neighbouring duplex. Immediately upon moving in, K. subjected the Tenant to constant harassment and abuse. She said she was forced to the police on a few occasions as a result of his behaviour. The Tenant testified that she tried on numerous occasions to seek the Landlords' assistance in this respect, but they cut off communication with her.

In terms of the amounts claimed, the Tenant provided detailed calculations wherein she estimated the amount she believed she was disturbed on a daily basis, and calculated the percentage of the month this represented as well as the corresponding rent.

The Tenant sought aggravated damages with respect to the harm she suffered as a result of the disturbances at the rental unit. In this respect she noted that the neighbour harassed and intimidated her and purposely made loud banging noises late at night and early in the morning. The Tenant asked the Landlords to help her deal with this and they refused. This tenancy was so traumatizing to the Tenant that she sought the services of a psychologist, who wrote a letter on her behalf confirming the impact this tenancy had on her.

The Tenant also sought compensation from the Landlords for the impact on her tenancy when the Landlord was using toxic varnish in the neighbouring unit; she testified that the smell was so bad that she could not breathe. She tried to open the windows for ventilation, but the Landlords got upset with her and told her not to use the heat so the apartment was freezing. The Tenant claimed that she was not provided any notice of their intention to do this work. Again, she tried to communicate with the Landlords about this, but as with her concerns about the neighbour, they refused to address her concerns. In support of this portion of her claim she provided evidence of her attempts to communicate with them.

The Tenant also sought compensation for loss of use of the shed in the back yard, as well as the mess left by the Landlords when they tore down the shed. The Tenant says she used this shed for storing her belongings for 3 years, and with only a few days notice the Landlords tore it down thereby restricting her use of the shed and the backyard.

The Tenant also sought compensation relating to her eviction. In this respect she confirmed she received a 2 Month Notice to End Tenancy for Landlord's Use on October 30, 2020 which was to be effective January 1, 2021. The Notice indicated the Landlord, or the Landlord's spouse, or child intended to move into the property. The Tenant confirmed that she moved out of the rental unit on December 31, 2020.

The Tenant testified that following the end of her tenancy, she went by the house every week and knocked on the door and determined that no one was living there. She submitted that the property was not used for the Landlords' family, instead, the Landlords renovated the unit and then put it on the market in June of 2021. In support, the Tenant provided photos of the rental unit on the MLS listing which shows the unit being completed renovated. The Tenant also provided a video of the unit on the date she moved out which showed the difference between what it looked like when the tenancy ended and after the renovations were done.

The Tenant stated that the Landlords accepted an offer on the property on June 30, 2021. The Tenant stated that she was further informed that the unit was vacant, as confirmed by the real estate agent. She noted that it was advertised as being vacant on the MLS listing.

As the Landlord failed to use the rental unit for the stated purpose on the Notice, the Tenant sought 12 months rent as compensation pursuant to section 51(2) of the *Act*.

Additionally, the Tenant confirmed the Landlords did not pay her the 1 month compensation required for such a notice to end tenancy, such that she also sought related compensation.

The Damage deposit section on the Monetary Orders Worksheet detailed the Tenant's claim for return of double her deposits paid. The Tenant testified that the Landlords failed to do a move in condition inspection of the rental unit. The Tenant confirmed that she provided her forwarding address to the Landlords on December 23, 2020. She also testified that the Landlords failed to return her security deposit and pet damage deposit and did not make a claim against her deposit within the 15 days required by the *Act*.

The Landlords failed to call into the hearing, and failed to submit any evidence in response to the Tenant's claims.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Compensation for Breach of the Tenant's Right to Quiet Enjoyment

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of the neighbouring tenant's behaviour, the Landlords' failure to take any steps to address her concerns in this respect as well as the Landlords' actions in using toxic chemicals in the neighbouring unit and restricting her access to the backyard and shed. The Tenant says that as a result of this tenancy, and the ongoing and frequent disturbances she endured, that she was emotionally traumatized to such an extent she required the assistance of mental health professionals.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

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

...

After considering the evidence before me, the Tenant's undisputed testimony and evidence, particularly the audio recordings of the neighbour's noise, and communication between the Tenant and the Landlords, I find the Tenant has proven that the Landlords breached her right to quiet enjoyment. It is clear the Landlords had no intention of addressing the Tenant's concerns and hoped that she would simply move out. The manner in which the Landlords treated the Tenant was dismissive and disrespectful. The Tenant made her best efforts to communicate her concerns with the Landlords and pleaded with them for their assistance. In all cases the Landlords ignored the Tenant and failed to take reasonable steps to protect her right to quiet enjoyment of the rental unit. I also find that the dismissive and disrespectful manner in which the Landlords treated the Tenant justify the award of aggravated damages in the amount claimed by the Tenant. I accept her testimony and evidence that this tenancy was so negative that she sought the care of mental health professionals; those involved in her care confirmed the significant negative impact on her.

I find the Tenant's calculations as to the impact on her, and the corresponding devaluation of her tenancy to be well thought out and supported by the evidence. I therefore award the Tenant the **\$5,389.00** claimed for compensation for the Landlords breach of her right to quiet enjoyment.

Compensation related to the 2 Month Notice to End Tenancy

The Tenants seek monetary compensation pursuant to section 51 of the *Act*. Section 51 provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under

subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I accept the Tenant's testimony that she did not receive her free month as provided for in section 51(1). I therefore award the Tenant the **\$1,050.00** claimed.

The Tenant also seeks 12 months' rent as compensation pursuant to section 51(2). In order to determine whether the Tenant is entitled to compensation pursuant to section 51(2) I must determine whether the Landlords took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

The reasons cited on the Notice were that "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

I accept the Tenants' evidence that within six months of the effective date of the Notice, the Landlord renovate the rental unit and sold the property. The evidence relating to the sale of the property persuades me that this property was not used for the stated purpose. As the property was sold during the six-month period after the effective date of the Notice and not occupied by the Landlord or the Landlords' close family member, I find the property was not used for the stated purpose on the Notice as required by the *Act*.

The Landlords did not attend the hearing and therefore did not provide any evidence which would support a finding that extenuating circumstances existed which should excuse them from pay the 12 months compensation. I therefore find the Tenant is entitled to the **\$12,600.00** claimed which represents her monthly rent of \$1,050.00 x 12 months.

Return of Double the Security and Pet Damage Deposit Paid

I find the Tenant paid a \$475.00 security deposit and a \$300.00 pet damage deposit for a total of \$775.00.

I accept the Tenant's testimony that the Landlords did not perform a move in condition inspection report as required by the *Residential Tenancy Act*. The applicable sections follow.

Condition inspection: start of tenancy or new pet

- 23** (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2)The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b)a previous inspection was not completed under subsection (1).
- (3)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4)The landlord must complete a condition inspection report in accordance with the regulations.
- (5)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6)The landlord must make the inspection and complete and sign the report without the tenant if
- (a)the landlord has complied with subsection (3), and
 - (b)the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

By failing to schedule a move in inspection as required by the *Act*, the Landlords have extinguished their right to claim against the deposits.

As such, when the tenancy ended the Landlords' only option under section 38(1) of the *Act* was to return the funds to the Tenant. The Landlords failed to return the security and pet damage deposit to the Tenant and therefore breached section 38(1) of the *Act*.

Section 38(6) provides that:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, I find the Tenant is entitled to return of double the \$775.00 deposits paid namely: **\$1,550.00**.

As the Tenant has been successful in her Application, I also award her recovery of the **\$100.00** filing fee.

Conclusion

The Tenants claim for monetary compensation in the amount of **\$20,689.00** is granted. The Tenant is entitled to a Monetary Order for this amount. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 20, 2022

Residential Tenancy Branch