



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDCT, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking an order limiting or setting conditions on the landlord's right to enter the rental unit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing, gave affirmed testimony and represented the other named tenant. The landlord also attended, gave affirmed testimony and was accompanied by the landlord's spouse, who also gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

A good deal of time was spent at the commencement of the hearing with respect to the exchange of evidence, which resulted in a finding that all evidence has been exchanged, by consent. Therefore, all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established that the landlord's right to enter the rental unit should be suspended or allowed conditionally?
- Have the tenants established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, with respect to the landlord's access to the rental unit?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on April 1, 2015 and reverted to a month-to-month tenancy after March 30, 2016, and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided for this hearing specifying rent in the amount of \$1,775.00 per month, which has increased to about \$1,982.00 per month. The tenancy agreement is silent with respect to when the rent is payable, however the tenant testified that it is paid on the 1st day of each month and there are no rental arrears. On February 23, 2015 the landlord collected a security deposit from the tenants in the amount of \$887.50 as well as a pet damage deposit in the amount of \$443.75 on April 1, 2015, both of which are still held in trust by the landlord. The rental unit is a full house, a single family dwelling and the landlord does not reside on the rental property.

The tenant further testified that the landlord has been showing up at the rental property up to 3 times per week for hours at a time, making the tenants' lives uncomfortable. The tenant talked to the Residential Tenancy Branch about having the landlord stop doing so. Once a week was fine, but it turned into 2 or 3 times per week and the tenants' children are uncomfortable.

The landlord has listed the house for sale and was doing yard maintenance, which is fine, but then decided to start fixing the house up and painting. The tenant is not opposed to that but 3 days per week is too much. Also, the landlord accused the tenants of damaging the house and yard which is not true. The landlord has sent nasty emails saying that he is trying to remediate damages made by the tenant, also not true.

As soon as the tenants gave letters about it from the Residential Tenancy Branch, the landlord backed off and started to realize that he needed to leave the tenants alone. The landlord has tried to evict the tenants by being there all the time and making the tenants uncomfortable.

The rental home has sold and a realtor gave the tenants an eviction notice indicating that the tenants had to be out by November 1, 2022, which the tenants had to sign. The landlord has been good since, but it's stressful enough having to move.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant testified that the landlord has said that the tenants have breached the tenancy agreement with respect to parking and an additional cat that the landlord knew about. The cat even sat on the landlord's lap. The tenants have done everything the landlord asked that they do, such as to clean the yard, however the landlord said that if the tenants didn't do so, bylaw enforcement would be started. The landlord has caused a lot of pressure.

Photographs of the rental property have been provided for this hearing, which includes an area with a lot of tarps, paint cans and painting material. The tenant is a professional painter.

With respect to the monetary claim, the tenants claim \$1,702.80 for the landlord attending at the rental unit 3 days per week. Toward the end of that, the landlord would just attend and leave, or work for an hour and then leave, from 10:00 a.m. until 2:30 p.m. The tenants' kids would be coming home from school who don't want to be there worried that the landlord might say something to them. The family was uncomfortable for 6 months, and the claim is 30% of the rent over the months of March, 2022 through to May or June. It started with emails with demands made, copies of which have been provided for this hearing, but the tenants put a stop to that. The tenant works full time and his wife has a very stressful job and the tenants told the landlord that he had to stop. The landlord was getting angry and upset. The tenants went through a slight separation due to housing and tried to purchase the rental home, but couldn't get financing because the house needed too much done. The landlord was there all the time, but not doing anything. The tenants couldn't have people over and the tenants asked the landlord to stop arriving 3 days per week, but the landlord kept pushing.

The landlord (DF) testified that he tried to have a cordial relationship with the tenants and give notice when showing up. Notice was given by email and the landlord got a reply accepting the request to remove branches and repair the front area of the rental home. The landlord received verbal acceptance or by email, but when it went sour, it turned into weekly visits, and only at the exterior of the rental home. Eventually the tenant told the landlord to stop coming so often and the landlord complied. The tenants' letter was dated June 23, and a copy has been provided for this hearing, and the landlord received it in late June. The last day that the landlord was there was June 24 and the letter was sent by registered mail.

The landlord tried to work with the realtor so as to not disrupt the tenants, and the landlord was preparing the property to sell in a reasonable manner with reasonable

notice. The landlord had to paint, and branches were piled and cut all over the place which had to be removed, and it took time. The arbutus trees were disturbed, and the biggest issue was piles of garbage.

There were a number of showings, and the tenants were given notice by the realtor, who had discussions with the tenants and got approval by email, as far as the landlord was aware. Once it got more challenging, notices were posted twice a week for 2-hour windows.

The landlord's spouse (DM) testified that for 6 years things went well. Rent was paid on time and the parties were amicable, but in 2021 things went poorly. The landlords tried to be polite and non-intrusive, but the tenants had not communicated with the landlords about being uncomfortable. The work being done was for their benefit. So as not to infringe on their time, the landlords went there when the tenants were not home. The tenants seemed okay with it and the landlord thought it was okay until letters started arriving, and that sort of thing. If the landlords knew the tenants were okay with 1 day per week the landlords would have honoured that. Once the landlords knew that the tenants were not okay with it, the landlord's spouse doesn't think they went back after that.

SUBMISSIONS OF THE TENANT:

The parties were friends until the tenants tried to buy; the landlord was not happy with the numbers from the inspection and appraisal process. The landlord has been an absentee landlord, and the rental unit has had a leaky roof for 6 years. The landlord would try to fix it, but the tenant tarped it. No one would finance the purchase because the house needed a lot of work and still does.

The tenants' application states that the landlord hasn't kept the house up for 6 years and is trying to make the tenants uncomfortable so that they will move out. It also mentions "borderline harassment," sending emails 3 – 5 times a week, is aggressive, confrontational, bullying, and adding a lot of stress to the tenants' lives, and some things the landlord wants to do isn't OK. The tenants asked nicely for alternatives and the landlord lashes out, lies and pretends it's the tenants' fault that the landlord has to do repairs, but just shows up.

SUBMISSIONS OF THE LANDLORD:

Chalk it up to poor communication by the tenants; the landlord can't read minds. The landlord was trying to get a better price than the tenants offered.

Analysis

The *Residential Tenancy Act* protects a tenant's right to quiet enjoyment of a rental unit; it is the tenants' home and must be respected as such.

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.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Therefore, I cannot consider chalking it up to poor communication; the landlord is required by law to comply. The landlord also submits that the landlord cannot read the tenants' minds, but I find that the landlord can read the *Act* and the Policy Guidelines.

The rental unit has sold and the tenants have been given notice to vacate November 1, 2022. I accept the undisputed testimony of the tenant that the landlord has continually entered onto the residential property several days per week without giving the required notice or receiving permission from the tenants at the time of entry. The landlord would just show up, and sometimes not do anything.

For the duration of the tenancy, I order the landlord to comply with Sections 28 and 29 as set out above. I further order that the landlord may enter onto the property to inspect it once per month.

With respect to the tenants' monetary claim, the tenants' application seeks 30% of the rent paid for the months of April through June, 2022, or \$567.60 per month, and continuing if the landlord's behaviour doesn't stop. The landlord testified that June 24 was the last day the landlord attended on the property, which was not disputed by the tenant, and the tenants' application was made on May 9, 2022.

I have read all of the evidence, including the lengthy letters and emails. The tenant responded to an email from the landlord on May 16, 2022 stating that the landlord's access is unreasonable, excessive and intrusive, and the level of frequency an invasion of privacy. It also states that the landlord's threatening that the tenancy could be at risk is not okay. Other emails from the tenant made it clear that the landlord's continuous demands and intrusions were not welcome. I also note that the landlord's notice of entry for showings states that it is important that the tenants cooperate by allowing access and making sure it is in clean and presentable condition. The tenants had no obligation to do so; the rental unit is the tenants' home until the tenancy has ended in accordance with the law.

One of the letters from the landlord to the tenants sets out a portion of Policy Guideline 6 – Right to Quiet Enjoyment which states: “Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent an ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyments. 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.”

In this case, there has been ongoing interference.

The landlord has provided photographs of the exterior, some showing a lot of debris and items, and some showing a clean yard. I accept the undisputed testimony of the tenant that the landlord had not maintained the rental unit, and was not happy with the state of the yard, which I find wasn’t an issue until the landlord decided to sell.

The landlord has also provided numerous photographs showing a cluttered interior, which is not relevant. The tenants’ housekeeping habits are not the landlord’s concern unless there is damage caused by it, and there is no evidence of that. The landlord had alternatives other than continually entering onto the property. I find that all of the landlord’s visits and requests for visits had everything to do with attempting to sell the rental property, not providing the tenants with quiet enjoyment of the rental property.

The landlord’s spouse testified that once the tenants notified the landlord that their access was intrusive the landlord did not return, and the last date that the landlord attended was on June 24, 2022. The record shows that the rental amount was \$1,892.00 per month. I find that the tenants have established a claim of 30% of the rent from March 20, 2022 to June 24, 2022, being 3 months, or \$1,702.80.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants in the amount of **\$1,802.80**. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,802.80.

For the duration of the tenancy, I order the landlord to comply with Sections 28 and 29 as set out above. I further order that the landlord may enter onto the property to inspect it once per month.

This order is final and binding and may be enforced.

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 03, 2022

Residential Tenancy Branch