



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ROYAL LEPAGE IN THE COMOX
VALLEY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR, RP, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for:

- compensation for a monetary loss or other money owed,
- a reduction in monthly rent,
- an order requiring the landlord to make repairs to the rental unit,
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and
- recovery of the cost of the filing fee.

The tenant and landlord's agents, JM and CB, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The agents represent the property management company who represent the owner. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence. The landlord confirmed receipt of the tenant's application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the

parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 applies and states that, “*claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply*”.

In this case, I determined that the most important claims that relate to each other are the tenant’s requests for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement (**claim 1**), and an order requiring the landlord to make repairs to the rental unit (**claim 2**).

For this reason, I have severed the tenant’s application in order to consider the related claims as noted, and dismiss the tenant’s claims for compensation and for a rent reduction, with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Additionally, the tenant delivered a USB drive to the RTB office, all of which was uploaded into the digital file by the office.

Rule 3.7 states the following:

3.7 Evidence must be organized, clear and legible All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient, and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Rule 3.10.2 states the following:

3.10.1 Description and labelling of digital evidence

To ensure a fair, efficient, and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office and be served on each respondent.

A party submitting digital evidence must:

- include with the digital evidence: o a description of the evidence;*
 - o identification of photographs, such as a logical number system and description;*
 - o a description of the contents of each digital file;*
 - o a time code for the key point in each audio or video recording; and*
 - o a statement as to the significance of each digital file;*
- submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and*
- serve the digital evidence on each respondent in accordance with 3.10.4.*

I have reviewed the lengthy contents of the USB stick and I find most of the digital evidence did not comply with the above Rules. For instance, individual files, which included numerous video and audio files, were unlabeled. For this reason, I have only considered the evidence which was labelled and identified and relevant to the issues considered.

Issue(s) to be Decided

Is the tenant entitled to the orders sought as outlined above and recovery of the cost of the filing fee?

Background and Evidence

The evidence showed this tenancy began on September 1, 2012 and current monthly rent is \$910.03, according to the tenant.

Claim 1

The tenant wrote the following in their application:

*I have complained to the property management company in regards to the neighbor in unit **1 in person/email/phone call on many occasions over the years. This year the neighbor has tried to assault me, and has threatened to harm myself as well as my children and pets. I have put a camera facing my door for our safety. Neighbor has issue with camera so management is now demanding camera removed but refuses to deal with the neighbor. I have recorded proof and will provide in USB flash drive.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant provided the following testimony in support of this claim. The tenant's next door neighbour, "RE", has continued for several years to be aggressive towards the tenant. Due to all the issues with RE the tenant installed a camera outside her door. There have been 11 police files altogether against RE, including mischief, destruction of property, and attempted destruction of property. The Saturday before the hearing, RE tried to attack her camera and push through her door. Later RE attacked the tenant's dog. For these reasons, the RCMP were called. A call to the landlord's agent resulted in nothing being done about RE's behaviour.

The tenant referred to the landlord's evidence to support her assertion that the landlord's have not addressed these issues with RE.

The tenant's evidence included an email to JM, as follows:

*This email is another noise complaint towards the neighbor in unit number **1.*

*I got home from work shortly after 8pm on July 26th 2022 and the neighbor in unit **1 was blasting music very loudly and unfortunately singing along. I left it alone and went to the store and spoke with the neighbor in unit **2 for a bit and returned to my home.*

Music never stopped and around midnight I called the non emergency number and spoke with dispatch, they sent an officer around 1am July 27th 2022. The officer called me to let me know that unfortunately she was not answering the door, but he was able to close her kitchen window to help lower the volume, and also said that he had left a ticket on her door.

*police file number is 2022-****3*

This is the 3rd email that I have sent with a police file number for 3 different incidents.

[Reproduced as written except for anonymizing personal information to protect privacy]

Other evidence filed by the tenant included complaints to the landlord about RE's excessive noise and behaviour.

Landlord's response

The agent provided the following testimony in response to this claim. With regard to the police complaints, there have been no formal charges that they were aware of and they have also received many complaints from RE about the tenant here. RE complained about the tenant's camera that was installed as the camera tracks RE's movements as she moves about the property. The camera was installed without the landlord's permission or knowledge. The tenant's camera is an invasion of the privacy of RE, other tenants, as well as the businesses in the complex. In particular, one business is a day care centre for autistic children, whose privacy has been invaded. The landlord has received several complaints about the tenant's camera and they gave the tenant a warning letter, requesting the tenant remove the camera. Both the tenant and RE have complained about each other for years and the owner wants both tenants gone from the property.

Filed in evidence was a copy of the warning letter, photos of the camera, and complaint letters.

The tenant responded and said the tracking on the camera has been turned off and the camera was removed from the door frame. Police charges have now been laid against RE.

Claim 2

In their application, the tenant writes the following:

I have lived in my unit for 10 years, flooring, cupboards, fridge need to be replaced, during inspection walk throughs they were all documented by property managers and inspection paper signed (I never received a copy) I have the last

two inspections auto recorded, file to big to add to application, but will be provided on a USB flash drive before hearing.

The tenant said that she has brought the repairs needed to the landlord's attention and they have not done the repairs. The carpet is thin, waving up, and wearing out and the linoleum is damaged. The flooring along the edges is also damaged.

The tenant submitted photos, which included pictures of paint peeling from 2 cupboard doors and a kitchen cupboard door hanging off the frame as well as pictures of the carpet and flooring.

The landlord submitted invoices for a new washer and dryer, a new vinyl deck installation, stove repair and dryer vent cleaning, along with a move-in condition inspection report (Report).

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The burden of proof in a dispute resolution hearing is on the person making the claim.

Claim 1

Section 28 of the Act addresses a tenant's right to quiet enjoyment, as follows:

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.

Tenancy Policy Guideline 6 addresses a tenant's entitlement to quiet enjoyment, as follows:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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.

...

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, I find the evidence shows that the tenant and their neighbouring tenant, RE, have both complained about each other to the landlord's agent, in the past and ongoing. The agents acknowledged this and said the owner wants both tenants gone.

What I did not have before me was evidence that the landlord has taken sufficient action to investigate and address the issues, other than send the tenant warning letters. I find the evidence before me indicates that the conflict between the two tenants is ongoing.

I find it troubling the police have been called to the residential property numerous times, apparently with no resolution, intervention, or investigations on the landlord's part. I find it is not upon the tenant to sort out their differences. It is the landlord's responsibility to take measures to resolve the conflict between tenants. The tenant has raised allegations of assault against RE and testified that there is an upcoming court hearing.

For these reasons, I find there is insufficient evidence before me that the landlord and agents have taken reasonable steps to correct the conflict and in turn, they have not afforded the tenant their right to quiet enjoyment. I therefore find the landlord has breached the Act.

Section 62(3) of the Act provides that: "The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order

that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

Accordingly, I hereby order that the landlord comply with section 28 of the Act with regards to ensuring the tenant has quiet enjoyment of their rental unit. I order this as I have found the landlord has not sufficiently addressed the tenant’s complaints about the conduct of the other tenant, RE.

I further find it necessary to issue additional orders to the landlord.

I **ORDER** the landlord to conduct and complete an investigation of the allegations of assault by RE against the tenant and other conduct and allegations, such as the threat of harm to the tenant, her children and pets.

I **ORDER** that this investigation be completed by **March 15, 2023**, because of the complaints of threats to their safety, raised by the tenant, and that a written report of the results be given to the tenant immediately after completion.

I **ORDER** the tenant to fully cooperate and provide the landlord with necessary documents, such a copies of court records.

Based on the results of the investigation, I **ORDER** the landlord to serve the other tenant, RE, a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) if the investigation shows it is appropriate.

Based on the results of the investigation, I **ORDER** the landlord to confirm in writing to the tenant why they determined it was not appropriate to serve RE a 1 Month Notice.

If the landlord fails to comply with these orders, the tenant is at liberty to apply for monetary compensation for loss of quiet enjoyment, including and up to a full rent abatement until the landlord fully complies and affords the tenant their right to quiet enjoyment.

Claim 2

Under section 32 of the Act, a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and

housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While I find the landlord's evidence of the Report shows the flooring and carpet were damaged and had reasonable wear and tear at the beginning of the tenancy, I find the tenant submitted insufficient evidence that the current state of the flooring represents a health or safety issue making the rental unit unsuitable for occupation from the photos.

I therefore decline to order the landlord to replace the flooring.

As to the cupboard doors, the tenant filed 3 labelled photos. As to the 2 photos showing the paint peeling away, I do not find sufficient evidence of a health or safety issue, but was more of a cosmetic issue.

As to the kitchen cupboard door that was hanging off the frame, I find that to be a safety issue. I therefore **ORDER** the landlord to re-hang the kitchen cupboard door, no later than March 15, 2023.

As I have found merit with portions of the tenant's application, I grant the tenant the recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Cautions

Although both parties provided testimony and evidence surrounding the tenant's camera outside their rental unit, I have not made any orders or findings about whether the camera must be removed or allowed to remain, as I do not find that issue is before me in this dispute. Claim 1 involves a request that I order the landlord to comply with the Act, the Regulation, or the tenancy agreement, not whether a tenant is allowed to keep a camera in place.

The tenant is cautioned that any unauthorized recordings of other tenants may infringe on their rights to privacy and/or quiet enjoyment and in turn, the landlord would be required to seek action against the offender, such as issuing a 1 Month Notice. The tenant may place a camera within their own unit if concerned about anyone entering or attempting to enter, without authority.

Conclusion

The tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and a part of the tenant's request for repairs has been successful.

Orders have been issued to the landlord.

The tenant's request for compensation for a monetary loss or other money owed and a reduction in monthly rent has been dismissed, with leave to reapply.

The tenant has been granted recovery of the filing fee of \$100.

A caution has been given to the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 22, 2023

Residential Tenancy Branch