Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNDCT, FFT

Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution, first made on May 3, 2021. On November 10, 2021, an arbitrator issued a decision in which she declined jurisdiction to consider the application. However, in an order of the Supreme Court of British Columbia dated July 28, 2022, the matter was remitted to the Residential Tenancy Branch for a new hearing to "consider both the merits of the [Tenant's] application and the Residential Tenancy Branch's jurisdiction to hear and decide the application."

The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and were assisted by TL, a legal advocate. The Landlords attended the hearing and were represented by RO, legal counsel. The Tenant and the Landlords provided a solemn affirmation at the beginning of the hearing.

As this matter was reconvened as described above, the parties were issued a Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. No issues were raised with respect to service or receipt of the parties' evidence packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed that the Tenant moved into the rental unit in November 2019 and that rent of $850.00 per month was due on the first day of each month. The Tenant moved out, taking a few of her belongings, on March 2, 2020. The remainder of the Tenant's belongings were removed on March 22, 2020. The Tenant did not pay a security deposit.

During the hearing, the Tenant testified to her previous belief that the Act did not apply to the living arrangement between the parties. It was not until she had a conversation with a friend after moving out of the rental unit that she determined that the Act applied and that she might be entitled to compensation.

A diagram of the rental unit was submitted into evidence. The Tenant's entry at the back of the house was shared with the Landlords. Upon entering, the Tenant would descend stairs from a landing into the rental unit. The Landlords would ascend stairs from the landing into their upper living space. The Tenant's rental unit consisted of a kitchen and a bathroom (which were not shared with the Landlords), a living room, and the larger of two bedrooms.

The parties confirmed there was no door separating the rental unit from the Landlords' living space. Indeed, the parties acknowledged that the agreement permitted the Landlords to pass through the rental unit to access a laundry and storage area. According to the Tenant, it is the Landlord's frequent presence in her suite which gave rise to her decision to move out and eventually commence this proceeding.

During the hearing, the Tenant testified that the Landlords characterized the living arrangement as a “roommate situation”, both before moving in and while the Tenant lived in the unit. In a type-written statement submitted into evidence by the Landlords, AB described the unit as “semi-private.” The Tenant testified that the Landlords stated they would respect her privacy and would always let her know when they needed to access the laundry and storage area. However, the Tenant asserted that the Landlords sometimes announced themselves and sometimes did not. The type-written statement of AB states that the Landlords avoided entering the unit in the evenings when the Tenant was home but always called out to let the Tenant know they were coming through the unit. AB advised that the Landlords tried to “keep it to a minimum.”

The Tenant described several instances when the Landlords violated her privacy. Although unable to recall the date, the Tenant testified that she was meditating in the rental unit a few days after moving in. As she was doing so, she heard someone coming down the stairs and then a freezer door opening.

The Tenant also described incidents in January or February 2020. During one incident, the Landlords had guests over and came downstairs to get a bottle of wine from the storage area. In another incident, the Landlords came downstairs and wanted to have a conversation about the Tenant’s dog venturing into the Landlords’ living area.

The incident that resulted in the Tenant’s decision to leave the rental unit occurred on February 29, 2020. The Tenant testified she was trying to purge some of her belongings and clean the rental unit. She testified that she stepped outside and was confronted by DB who advised that AB was concerned about cleanliness in the rental unit. The Tenant testified that DB’s tone was “demeaning…ridiculing…disrespectful…aggressive …abrasive.” The Tenant testified that she felt “threatened” by DB. The Tenant testified that she was taken from her home as a young person and felt unsafe when confronted by DB, who is physically larger than she is. In a type-written statement submitted by the Landlords, DB acknowledged that he discussed the condition of the rental unit with the Tenant. DB also asserted that the entire exchange lasted about two minutes, during which he did not raise his voice or threaten or intimidate the Tenant.

The Tenant testified that, as a result of these incidents, she moved out on March 2, 2020 and did not return to live in the rental unit. The Tenant removed the last of her belongings from the rental unit on March 22, 2020.

On behalf of the Landlords, RO stated that the Tenant never raised her concerns with the Landlords. Rather, the Landlords first learned of the Tenant's discontent with the living arrangement was on March 3, 2020, when they received a letter on the stairs advising of the Tenant's intention to move out. RO asserted that the Tenant was aware of the semi-private nature of the rental and that the Tenant occasionally came upstairs to chat about issues. RO asserted that it was reasonable for the Landlords to raise cleanliness concerns with the Tenant, but that it was unreasonable for the Tenant to move out without ever having raised her concerns with the Landlords.

RO also referred to the signed statement of AS, who also works with the Tenant and AD, dated August 13, 2021. In it, AS describes a conversation over Christmas dinner in 2019:

> The expected "how is your new place" question came up. [The Tenant] said that she is happy with her place and that [the Landlords] are very nice people…
>
> We discussed some more about the place. She told me about lack of privacy, she said that she knew it before moving in and that's why the rent was cheaper. Overall, she said she was very happy with the living arrangement…

TL submitted that the "passageway" to access the laundry and storage area does not negate the Tenant's right to quiet enjoyment of the rental unit. TL submitted that the unpredictability of the Landlords' entry led to tension. TL also referred to a power imbalance between the parties.

The Tenant's claim for $6,408.90 is particularized on a Monetary Order Worksheet dated February 23, 2021. Briefly, the Tenant's claims that her losses flow from the Landlords breach of the Act and the tenancy agreement. Specifically, the Tenant claims that her losses arose because she had to vacate the rental unit due to the Landlords behaviour which resulted in a loss of quiet enjoyment of the rental unit.

The Tenant claims reimbursement of the following:

- rent from December 1, 2019 to March 31, 2020 ($2,125.00);
- hotel stays from March 16-19 and March 22-April 29, 2020 ($2,023.27);
- moving truck rental on March 22, 2022 ($95.68);

- moving truck rental on April 30, 2020 ($110.10);
- moving company expenses ($420.00) and assistance of a friend, BF ($200.00) related to moving belongings from the rental unit on March 22, 2020;
- moving costs from storage unit and hotel to new accommodation on or about April 30, 2020 ($500.00);
- gas money paid to a friend, MH, who helped the Tenant move on March 2, 2020 ($30.00);
- moving supplies ($5.60);
- accommodation costs paid to an acquaintance, GP, in March 2020 ($700.00);
- Canada Post mail forwarding ($89.25);
- money paid to VW for help with moving ($100.00); and
- “excess use” of cellular data ($10.00).

The Tenant also sought to recover the $100.00 filing fee paid to make the application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Issue – Jurisdiction of the Residential Tenancy Branch

Section 2 of the Act confirms that the Act applies to “tenancy agreements, rental units and other residential property.”

Section 1 of the Act defines “tenancy agreement” as **“**an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”.

Section 4(c) of the Act confirms that the Act does not apply if the owner of a rental property shares bathroom or kitchen facilities with the tenant.

In this case, I find that the Tenant moved into the rental unit on a month-to-month basis in November 2019, and that rent of $850.00 per month was due on the first day of each month. I also find the Tenant did not pay a security deposit.

In addition, I find that the parties agreed that the Landlords were entitled to access a laundry and storage area through the Tenant's rental unit and that the Landlords would minimize the frequency of times they would access the rental unit.

Considering the above, I find that a tenancy agreement existed between the parties and that the Act applies. I accept that the Tenant did not have exclusive use of the rental unit. Again, there was no door between the Tenant's living space and the Landlord's living space, and the parties agreed the Landlords could access the laundry and storage area through the Tenant's unit. However, I was not referred to and am unaware of any provision in the Act which prohibits such an arrangement.

In addition, I note that section 4(c) of the Act confirms the Act does not apply if the owner of a rental property shares bathroom or kitchen facilities with the tenant. In this case, the parties agreed the Landlords were entitled to access the laundry and storage area through the Tenant's unit. However, the Tenant enjoyed exclusive use of the bathroom, kitchen, and her bedroom. That is, the Tenant did not share bathroom or kitchen facilities with the Landlords. I accept that this provision describes the specific intention of the legislature to carve out circumstances in which the Act does not apply. If the Act did not apply simply because some parts of a rental unit were shared, the Act could have reflected this.

Issue – Is the Tenant entitled to the monetary relief sought?

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant's claim is for recovery of losses she asserts were incurred due to the Landlords' breach of her right to quiet enjoyment.

Section 28 of the Act protects a tenant's right to quiet enjoyment. Specifically, it protects a tenant's right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit, and use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 elaborates on the right to quiet enjoyment. It states:

> 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.
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> 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 this case, after careful consideration of the evidence and submissions of the parties, I find there is insufficient evidence before me to grant the relief sought. First, I find there is insufficient evidence to demonstrate that the Landlords breached the Act or the tenancy agreement. The parties agreed during the hearing that the Landlords were entitled to access a laundry and storage area through the Tenant's unit during the tenancy. I find there is insufficient evidence before me to conclude the parties had any agreement with respect to the frequency of the Landlords' entries. However, I accept the Landlords' evidence that entries were "kept to a minimum."

Further, while I accept that the Tenant felt like the Landlords' access became too frequent and that she felt unsafe, I find there is insufficient evidence before me to conclude the Landlords' entries were unreasonable or caused a substantial interference with the Tenant's enjoyment of the rental unit. Rather, I find it is more likely than not that the Landlords' entries caused only a temporary inconvenience or disturbance to the Tenant. Indeed, there were few specific instances described in the Tenant's testimony.

I also find there is insufficient evidence before me to conclude that the Landlords acted in an aggressive or threatening manner on February 29, 2020, or at any other time, as alleged by the Tenant. I also find there is insufficient evidence before me to conclude the Landlords' behaviour resulted in the Tenant's abrupt decision to move. Rather, I find it is more likely than not that the Tenant's decision to vacate the rental unit two days after the conversation on February 29, 2020, was related to other factors and not to the Landlords' behaviour.

Second, I find there is insufficient evidence before me to conclude the Tenant took any reasonable steps to minimize her losses. I accept the evidence of the Landlords who testified that they did not know of the Tenant's concerns until they received written notice on March 3, 2020. I find the Tenant did not advise the Landlords that she believed their entries were excessive or disruptive. In addition, I was also not advised of any application being made to the Residential Tenancy Branch for an order suspending or setting conditions on the Landlords' right to access the rental unit.

Considering the above, I find that the Landlords did not breach the Act or the tenancy agreement. I also find the Tenant did not take reasonable steps to minimize her losses. Accordingly, I find that the Tenant's claims fail. The Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without 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: April 12, 2023

Residential Tenancy Branch