



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On January 20, 2023, the tenants filed for:

- compensation for monetary loss or other money owed; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch (RTB) Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither side raised an issue regarding service of the hearing materials for the May 4, 2023 reconvened hearing.

Procedural History

This hearing was reconvened after it was adjourned on February 27 and April 11, 2023. This decision should be read in conjunction with the Interim Decisions issued on February 28, 2023 and April 24, 2023.

The Interim Decisions and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties, at the emails addresses they provided to the Residential Tenancy Branch.

In each part of the hearing, the parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting

recording dispute resolution hearings.

Preliminary Matters

The tenants applied for \$35,000.00 in compensation for monetary loss or other money owed and applied to recover the \$100.00 filing fee. As I advised the tenants that pursuant to Rule 2.8 the maximum monetary claim that may be heard by the Residential Tenancy Branch is \$35,000.00, the tenants amended their application to reduce their compensation claim to \$34,900.00, bringing the total amount of their claims to \$35,000.00.

Issues to be Decided

- 1) Are the tenants entitled to compensation in the amount of \$34,900.00?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began December 1, 2021, rent was \$1,700.00, due on the first of the month, and the tenants paid a security deposit of \$1,700.00, which the landlords still hold. The parties agreed that the landlords live in the unit above the rental unit, and that the subject tenancy has ended.

A copy of the tenancy agreement and addendum is submitted as evidence. The tenancy agreement states that two parking spots are included in the rent.

The tenants testified they seek \$34,900.00 due to the amount of abuse they experienced during the tenancy.

The tenants testified that the landlords would torture the tenants with noise during the day and night, which sometimes resulted in the tenants' children waking up crying. The tenants testified this began on August 23, 2022, when they were served with a notice to end the tenancy. The tenants testified that the noises included yelling, stomping, the dryer, balls bouncing, dogs barking, furniture scraping across the floor, and the landlord screaming "the f-word."

Submitted as evidence are numerous recordings, including the following:

- a person walking heavily in hard-soled shoes on September 9 at 2:53 AM; and January 26 at 2:58 AM
- a ball bouncing heavily and repeatedly on October 1 at 5:45 AM; and
- yelling, on February 2 at 9:37 PM;

Submitted as evidence by the tenant is an incomplete text string between the parties, in which the tenants wrote on September 8 that the landlord had intentionally been noisy, walking over the tenants' bedrooms, and the landlord replied "Stop it, Walk any where is my freedom and right in my house, my life don't have to follow your schedule ... What time I am working and walking, is my freedom. Again, concrete building and house are much better. My house build as it is, I can't help." On September 14 the landlord wrote: "Don't slam the door or hit the wall ... I felt the door slammed hard, the house was shaking, and the loud sound of," -- the remainder of the landlord's text is not shown, and the text string picks up with the tenant's response. In a text on September 16 at 4:11 AM, the landlord wrote: "Stop I will call the police," and the tenants responded: "Yes, please I want them to come and see what you are doing To us."

The tenants testified they were harassed by the landlord, stating that the landlord prevented them from sitting outside, and prevented the tenants' children from playing outside. The tenants testified that when they came to view the unit, the landlord said the children could play in the yard and on the trampoline. The tenants testified that the first time they were harassed by the landlord was on June 12. While their family was outside, the landlord came down, yelled at the tenants, told them to go inside, and sent her dog down to scare the children.

The tenants testified that on August 30 their children were playing on the lawn when the landlord, who was on her deck, began to shake out a carpet above them. A video is submitted as evidence.

The tenants described an incident when a heating technician visited the rental unit, and asked the tenants why they were video recording him. The tenants testified they did so because last time the technician and the landlord had visited, the landlord had "shushed" the tenants' child, but the tenants did not have a video of that.

The tenants testified that once when they went out to video the landlord's dog, the landlord began to video the tenants and did not stop after the tenants entered the unit.

The tenants testified that the landlord set up a trap to deter the children from playing outside, but did not elaborate.

The tenants testified that though the tenancy agreement states that two parking spots are included in the rent, after May and August the landlord parked her car in front of the house, preventing the tenants from accessing their two parking spots. The tenants testified that before May they had parked on the street in front of the house, to be considerate.

The tenants submitted that they experienced mental and emotional suffering because the landlord put up a fence blocking their access to the back yard. A photo of a low wire fence is submitted as evidence; a sign on the fence states: "Private Property, No Trespassing, Beware of Dog." Submitted as evidence by the tenant is a text message from the property manager, who stated that the landlord has taken down the signs, the fence will stay up, the tenants are welcome to use the back yard, but are asked to use the gate and be mindful of the dog, who will play in the yard. The tenants testified that after three days the signs were put back up.

The tenants also testified the landlord did not address mould in the unit; there was a bump in the flooring, which the landlord blamed on the tenants; the tenants did not have access to the locked mailbox, and the landlord did not give them their mail promptly; and the landlord installed an outdoor camera which faced the tenants' entrance and recorded the tenants' children playing.

The landlord testified that after they served the tenants with an eviction notice on May 16, the tenants told the landlord there was mould in the unit. The landlord testified they found lots of water in the unit and that the laminated flooring in the hallway had warped. Photos of the wet floor are submitted as evidence. The landlord testified that the tenants later would not let her into the unit, despite the landlord providing 24 hours notice five times. The landlord testified that when she tried to access the unit, one of the tenants raised his hand to hit her. The landlord referred me to a video in evidence, in which one of the tenants points at the camera, and the tenant and the landlord raise their voices at each other.

The landlord testified that after the tenants moved out, the water was gone, there was no sign of a leak, and the bump was gone from the laminate. The landlord testified that their contractor said there was no way for the water to have leaked onto the floor. The landlord testified that the tenants had put the water on the floor, and that the unit had never previously had a problem.

The landlord testified that the tenants had parked on the lawn to harass the landlord, one of the tenants had yelled at the landlords' dog, the tenants' children had hit the dog, and that the landlords put up the outdoor camera because the children had hit the dog.

The landlord testified they had put a note on the tenants' car when the tenants parked in the landlords' driveway. The landlords did not clarify where the tenants' two parking spaces were, pursuant to the tenancy agreement.

The landlord testified that she had asked the tenants not to trample the lawn. A text dated June 12, from the landlord to the tenants is submitted in support, and states: "I don't like playing football in the backyard, trampling the lawn, and the backyard is not a football field." The landlord testified the tenants damaged the lawn, and could have used

the nearby park. Submitted as evidence by the landlord is a video named "Damage the alwn [sic] on purpose," showing the tenants' small children riding a bike in the back yard, doing no noticeable damage to the lawn.

The landlord submitted that the tenants said she yelled at their two-year-old son, which is not true. The landlord testified that the tenants yelled at the landlord.

Regarding the audio recordings the tenants submitted as evidence, the landlord said that some of the noise the tenants recorded at 3:00 AM was the water heater, not the landlord; the landlord submitted that their dog does drop its ball during the day and night, but that it was misleading of the tenants to record the sound at 5:00 AM, rather than at another time of day. The landlord did not acknowledge that the sound at that hour significantly disturbed the tenants.

Regarding the tenants' recordings of stomping, the landlord testified there are four people in her household, her kids have visitors, and the landlord does not ask visitors to remove their shoes. The landlord testified that she wears old shoes in the house, not heels. The landlord said the city bylaw permits people to wear shoes inside.

The landlord testified that the tenants follow her and record her everywhere – on the deck, doing laundry, even in the washroom. The landlord testified that the tenants make noise too; they slam doors so hard the house shakes, bang the walls, and cause the landlord stress and lost sleep. Submitted as evidence is a recording of a young child screeching. Another recording submitted by the landlord is of multiple children crying and, at times, yelling. The landlord testified that the tenants bang on the walls before 9:00 PM while the landlord is watching television.

The landlord testified that when the furnace needed to be repaired they gave the tenants 24 hours notice, changed the appointment time three times to accommodate the tenants, waited 10 extra minutes after the appointed time, then entered the unit as the tenants were not home. The landlord testified that the tenants shouted at the landlord when they arrived home, and that the tenants video recorded the technician, who needed to focus while working with electricity and gas. The landlords submitted as evidence a video of the tenants videorecording the technician, and the technician later calling the police for advice, stating that he cannot focus on his work while being recorded by the tenants. The landlord testified she had to pay for extra time due to the delay caused by the tenants.

The landlord testified that they put up the fence to keep the tenants from harassing them, that the tenants were not to use the yard or the trampoline, and that after the tenants accused the landlord of losing their mail, the landlord told the tenants to text her when they would like to collect their mail.

Throughout the hearing, the parties described recording each other and calling the police on each other.

Analysis

The tenants seek monetary compensation in the amount of \$34,900.00.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment of the rental unit.

Policy Guideline 6 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."

The tenants have provided affirmed testimony and documentary evidence demonstrating that the landlord repeatedly created considerable noise during the night and early morning hours, disrupting the tenants' sleep. The tenants testified the noise disturbances began on August 23, 2022, when they were served with a notice to end the tenancy. The parties agreed during the hearing on April 11, 2023 that the tenants had moved out of the unit. It is unclear on what date the tenants vacated the rental unit.

The landlord did not respond to the tenants' testimony and evidence regarding the late night and early morning noise produced by the landlord, except to state that while her dog does drop its ball during the day and night, it was misleading of the tenants to record the sound at 5:00 AM, rather than at another time of day. The landlord appeared to have no regard for the fact that this noise at that hour significantly disturbed the tenants' sleep. I accept the landlord's evidence that the tenants were also very noisy at times, but as the landlord did not articulate how this impacted her sleep, and with what frequency, I find a distinct difference between the seriousness of the noise disturbances produced by the two parties.

Therefore, I find the tenant's right to quiet enjoyment was breached by the landlord, per section 28 of the Act.

Based on the forgoing, I find the tenant is entitled to a monetary award for loss of quiet enjoyment. Considering that the period of nighttime disturbances began the end of August 2022, and the tenancy had ended by April 2023, a period of approximately seven months, I find the tenants are entitled to a monetary award of **\$4,000.00**. I have come to this amount by considering that the tenants are entitled to a rent reduction of around one third, for September 2022 to the approximate end of the tenancy. The tenants still had full use of the unit, but their sleep and enjoyment of the unit was considerably impacted by the landlord's actions, for an extended period.

I decline to award an additional amount as the landlord has provided considerable evidence that the tenants disturbed and interfered with the landlord during this tenancy.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are somewhat successful in their application, I order the landlord to pay the **\$100.00** filing fee the tenants paid to apply for dispute resolution.

The tenants are entitled to a monetary order in the amount of **\$4,100.00**, comprising \$4,000.00 for the preceding monetary award and \$100.00 for the filing fee.

Conclusion

The tenants are granted a monetary order in the amount of **\$4,100.00**. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 12, 2023

Residential Tenancy Branch