



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BURNABY MOUNTAINVIEW
APARTMENTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT, MNDCL, FFL

Introduction

This hearing dealt with cross-applications pursuant to the *Act* for:

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

The landlord applied for:

- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, **I refer to only the relevant facts and issues in this decision.**

Preliminary Issue – Jurisdiction

At the outset of the hearing, the tenant's application was reviewed, and they confirmed that they were seeking \$109,684.24. It was explained to the tenants that the Residential Tenancy Act can only address a monetary claim of up to \$35,000.00. The tenants advised that they would be abandoning their original claim amount and lowered it to the \$35,000.00. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Is either party entitled to a monetary order as compensation?

Is either party entitled to the recovery of the filing fee?

Background and Evidence

The tenants gave the following testimony. The tenancy began on April 1, 1989 and ended on August 31, 2020 with the rent of \$1081.00 due on the first day of the month. The tenants have filed an application seeking a monetary claim for the following as noted on the application:

“Retroactive damages of \$200/month related to the infringement of our right to quiet enjoyment for noise/smoke/other disturbances from #4-7120 Pandora Street (30 months-\$6000) and #15-7140 Pandora Street (31 months-\$6200). \$1400 move-out allowance for the landlord's 'creative' renovation. \$4000 for bullying from management and landlord. \$5000 for RTA breach. \$619/month for 10 years (\$74280) for measurable loss from September 1, 2020. Nathan Andrews is seeking \$8000 for pain/suffering.”

NA testified that the landlords failed to respond to their complaints of loss of quiet enjoyment due to the actions of other tenants in the building. NA testified that two other units in the building breached his quiet enjoyment by smoking on the property or causing noise throughout all hours of the day. NA testified that the landlord did not take any of the complaints seriously which in turn caused his health to be affected. RL testified that he had lived in the building for 31 years and enjoyed much of his time there until the tenants in another unit caused such anxiety and stress, that he had to move.

The landlord and his agent gave the following testimony. CY testified that the tenants have an axe to grind by filing this application one day short of the two-year limitation

period. CY testified that NA has stalked him and has been the aggressor throughout. CY testified that NA was very unreasonable about making noise complaints during the middle of the day when other tenants were listening to music at a reasonable level. CH testified that much of the tenant's claims were addressed in a 2018 hearing at the Branch. CH testified that the actions of NA have gone way beyond an arbitration hearing and that he has harassed and stalked him. CH testified that the tenants were the only ones to complain about their two neighbours and that both of those neighbours continue to live in the building.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord and the property manager to be a more credible witness than either of the tenants. The landlord and his property manager provided consistent, logical testimony.

NA was argumentative, focused on irrelevant matters and conducted himself in an agitated manner. I found that much of NA's submissions have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. When given the opportunity to present their claim, NA chose to recite anecdotal information and have "character witnesses" testify, rather than present the claim and explain how they came to the amount sought and focus on any substantive matter. Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's version and his property manager to be more credible and consistent with how a reasonable person would behave.

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenants did not properly present their application and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, NA failed to properly go through his claims and evidence submitted in support of the application. He mentioned that he submitted documents for this hearing, but he failed to review them in sufficient detail during this hearing. He did not point me to specific documents or page numbers.

This hearing lasted 90 minutes, 30 minutes longer than scheduled. The tenants spoke for 75 minutes, the landlord spoke for 15 minutes. The tenants had ample opportunity to present their claim and respond to the landlord's testimony.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties at this hearing and the tenant's evidence submitted for this hearing.

Tenants Claim

I address the tenant's application as follows.

The tenants seek \$35,000.00 for the loss of quiet enjoyment, harassment, bullying, and moving costs. The tenants originally applied for \$109,684.24 but abandoned that claim and advised that they were seeking \$35,000.00. As noted above, the tenants submitted their evidence in a vague and disjointed fashion. Despite being given the majority of the hearing to present their claim, the tenants continually referred to irrelevant or unrelated issues. The tenants failed to provide sufficient evidence to satisfy all four grounds as listed above and as is required, accordingly; I dismiss their application in its entirety without leave to reapply.

Landlords Claim

The landlord hired a lawyer to address the tenants claims and incurred some costs for legal research. There is no requirement under the Act for a party to hire a lawyer; that was the landlords own personal choice to do so, accordingly; I dismiss the landlords claim for legal fees. As that was the only claim in their application and I have dismissed it, they are not entitled to the recovery of the filing fee, as a result, the landlords' application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord's application is dismissed in its entirety 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: June 12, 2023

Residential Tenancy Branch