



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding T & W PACIFIC ENTERPRISES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

During the course of the hearing the tenant testified that he has vacated the rental unit. Therefore, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant 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?

Background and Evidence

The tenant testified that this fixed-term tenancy began on November 1, 2022 and expired on April 30, 2023. Rent in the amount of \$850.00 was payable on the 1st day of

each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in an apartment complex. A copy of the tenancy agreement has been provided for this hearing which states that after the end of the fixed term, the tenant must move out.

The tenant further testified that he was evicted from the rental unit illegally, and moved out about 10 days prior to this hearing. Last year, one of the landlord's agents came pounding on the tenant's door saying that the lease was due and the tenant had to leave. The tenant believes it's because he complained too much about crack heads in the building. Copies of numerous text messages have been provided for this hearing, and the tenant testified they were exchanged between the tenant and the owner or a daughter or daughter-in-law of the owner.

The tenant testified that the claim is for loss of quiet enjoyment of the rental unit as well as for the illegal eviction and stress. The tenant was being kept awake month after month, with crack heads up all night carving wood and making noise. The tenant complained to the landlord's agents and about the smell of cocaine in the tenant's apartment. The tenant loved the apartment and did not want to vacate.

The tenant's application seeks \$10,200.00 indicating that the tenant's life style has been turned inside out; crackhead, drug addicts, chopping wood in the kitchen at 3:00 a.m. and that the exhale or exhaust from crack pipes wafts directly into the tenant's apartment, and that the tenant has suffered for a year, afraid to go to bed.

The tenant claims \$10,200.00 as against the landlord.

The landlord's agent (SQ) testified that since hearing about the tenant's reports, the landlord gave notices to another tenant in the floor below the tenant's apartment about noise and smoking. In October, 2023 the downstairs neighbour complained about the tenant, so another notice was given to both tenants, and a copy has been provided for this hearing.

In February, 2023 the landlord's agents approached the neighbours in the lower level suite that the tenant had complained about, as well as 2 others, all of whom said they never heard any noise or disturbances. Another unit would have been the first to hear any disturbances, but said the noise was at a reasonable level. In December, 2023 that neighbour was approached again by telephone who said the same level of noise was experienced. Four tenants in the apartment complex were asked about the smell of cocaine, and all said they did not smell smoke.

Because the landlord's agents couldn't find any evidence or reports of the issues that the tenant had raised, the tenant was asked to provide evidence of the complaints.

In 2023 one of the landlord's agents made 10 attempts to visit the rental unit, once per month or every other month, and one lived in another unit for 60 days throughout the year but never received any complaints about smoke. However, the tenant spoke to the person on November 29 and December 2, 2023 about noise. On November 29, 2023 the agent checked on the noise right away, and heard music playing at a reasonable level and the tenant agreed at that time that it was reasonable. However on December 2, 2023 the tenant gave 2 reports to the agent who went to check both times and didn't hear anything.

On November 3, 2023 the lower level tenant called police for a report that the tenant was making a lot of noises and recorded it. It sounded like a wooden stick or cane used to strike the floor. Police came, heard the noise and gave a warning and fine to the tenant. The tenant didn't provide any evidence, so the landlords offered to help in other ways, such as an offer in November, 2023 and March, 2023 to move to another unit, but the tenant said he didn't want to move and would deal with it his own way.

A previous hearing was held on February 8, 2024 wherein the tenant applied for an order cancelling a notice to end the tenancy for unpaid rent and for an order that the landlord provide services or facilities required by the tenancy agreement or the law. I advised the parties that it is important for me to know to ensure that I do not make any findings or orders on an issue that has already been adjudicated upon. The resulting Decision is dated February 8, 2024 and the landlord was awarded an order of possession and a monetary order for unpaid rent. The tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or the law was dismissed with leave to reapply.

The landlord's agents were not aware that the fixed-term reverts to a month-to-month tenancy, and usually when the fixed term ends, the landlords talk to tenants and if they want to stay, the period would be extended, but this tenant did not ask to extend. The tenant was given a notice on March 31, 2023, of a copy which has been provided for this hearing. At the end of the fixed-term, another agent of the landlord knocked at the tenant's door, but there was no response. The landlord's agents assumed the tenant was still there, so called Residential Tenancy Branch, which is when the landlord's agents found out that the tenant had the right to stay. The landlords have since changed their tenancy agreements.

On May 1, 2023 another letter was sent to the tenant extending the tenancy for 1 more month. However on June 1, 2023 the landlord's agents received more information and

were able to understand the law, and gave the tenant another letter confirming that the tenancy continues on a month-to-month basis.

The tenant moved out on February 20, 2024. Just before the tenant vacated, another agent of the landlord received a call from RCMP saying that the tenant made complaints about the neighbour in the lower level for abusing her children. Police investigated but didn't find anything, and told the agent that the tenant was warned about it.

There is no evidence to support the tenant's allegations about others being addicted to crack.

Prior to the hearing ending, the tenant uttered some profane language and disconnected from the conference call. Also, during the hearing, the tenant was disruptive to the point that I had to mute him twice in order to hear the testimony of the landlord's agent. The landlord had 2 other agents of the landlord available to testify, however due to the tenant disconnecting from the call, I declined to hear from them.

Analysis

Where a party makes a claim for monetary compensation, the onus is on the claiming party to satisfy the 4-part test:

1. that the claiming party suffered damages or a loss;
2. that the claiming party suffered those damages or loss as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, I find that there are 2 elements to the tenant's claim: illegal eviction and loss of quiet enjoyment.

With respect to the "illegal eviction" a landlord may not require in a tenancy agreement that at the end of a fixed term the tenant must vacate the rental unit except as provided for in the *Act*. The regulations specify that such a term can only be used for the purpose of a landlord or close family member to occupy the rental unit at the end of the term. Consequences for a landlord failing to comply with that section is compensation to the tenant in the equivalent of 12 months rent.

Twelve times the monthly rent is \$10,200.00, the amount of the tenant's claim.

In this case, the tenancy agreement states that at the end of the fixed-term the tenant must vacate, "As per requirements of addendum." The Addendum states that all agreements will be on 6 month terms, with renewal requests in writing, due within 60 days of the final date of vacancy, which will be discussed and negotiated upon, and approved through discretion and history. The tenant mentioned several times during the hearing that the landlord's eviction was illegal, and I find that the tenant has suffered damages of fear of losing his home as a result the landlord's error.

With respect to quantum, since the fixed term expired on April 30, 2023, and the landlord retracted the landlord's previous request for vacant possession in writing on May 1, 2023, and the tenant remained in the rental unit until February 20, 2024, I am not satisfied that the tenant is entitled to 12 times the monthly rent, because the tenancy did not end as a result of the fixed term.

However, where a landlord ends a tenancy for landlord's use of property, the landlord must compensate the tenant the equivalent of 1 month's rent. Considering the landlord's continued efforts to require the tenant to sign a new tenancy agreement or move out, I find that the tenant has established a claim equivalent to 1 month's rent, or \$850.00.

The evidence shows that the tenant complained many times about noise from other apartments to the landlord by text messages. I have reviewed all of them. I also consider the testimony of the landlord's agent that numerous investigations resulted in no other complaints from neighbours about unreasonable noise or the smell of crack cocaine or smoking. Police also attended and did not find any evidence to corroborate the tenant's complaints. The tenant was encouraged to provide proof to the landlord, but didn't do so.

The text messages provided by the tenant for this hearing indicate that the tenant knows the law, and that the neighbouring tenant in the lower level should be given a "10 day emergency eviction." That is not lawful. The landlord's response several times in the text messages is that without evidence, the landlord may not be successful in obtaining an order of possession due to 1 person only complaining with no corroborating evidence. That is the law, not a 10 day emergency eviction. A tenant who makes a claim for loss of quiet enjoyment must be able to establish that the landlord did not take the tenant's complaints seriously enough or stood idly by and allowed the disturbances to continue. In this case, I am satisfied that the landlord did what was reasonable, and did not fail to comply with the law.

I also accept the undisputed testimony of the landlord's agent that on 2 occasions the tenant was offered another unit to move to, but the tenant declined.

Considering the evidence provided and the testimony of the parties, I find that the tenant has failed to satisfy me that the landlord failed to comply with the *Act* or the tenancy agreement, with respect to the claim for loss of quiet enjoyment. I also find that the tenant failed to mitigate any damage or loss suffered by failing to provide any evidence to the landlord about noise issues or smoking, and refused on 2 occasions the landlord's offer to move to another rental unit. I dismiss the tenant's claim for loss of quiet enjoyment.

Having found that the tenant has established a claim in the amount of \$850.00, the tenant is also entitled to recover of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in the amount of \$950.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$950.00.

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: March 01, 2024

Residential Tenancy Branch