Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, OLC, LRE, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants made application for compensation damage or loss under the Act, an Order that the landlord comply with the Act, that conditions be placed on the landlord's right to enter the rental unit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing and to make submissions during the hearing.

Preliminary Matters

At the start of the hearing there was some discussion in relation to the service of evidence. The tenants sent the landlord their evidence via registered mail on November 4, 2010. The landlord retrieved the evidence from the post office on November 12, 2010. I determined that the tenant's evidence was served effective November 9, 2010; on the fifth day after mailing, pursuant to section 90 of the Act.

The landlord served the tenants with his evidence 1 day prior to the hearing. The tenants confirmed that they had briefly reviewed the evidence but objected to its use, particularly because it included copies of emails which the tenant's believed would not be considered as a valid form of communication.

I determined that as the tenants did engage in communication via email and that the tenants did not deny having previously seen the emails and that the landlord was at liberty to reference the evidence package, which each party had before them. The tenants were given opportunities to respond to the email evidence that the landlord referred to during the hearing. I found that this email communication was a valid form of communication between the parties and, from the evidence before me, that it was a commonly used method of communication between the parties.

The spelling of the landlord's name on the application was amended to the correct form.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act in the sum of $1,750.00?

Must the landlord be Ordered to comply with the Act?

Should conditions be placed on the landlord's right to enter the rental unit?

Are the tenants entitled to filing fee costs?

Background and Evidence

This tenancy commenced on June 1, 2010. Rent is $1,000.00 due on the first day of each month.

The tenants have made the following claim:

Loss of quiet enjoyment	1,000.00
Hotel cost – ants	205.85
Loss of food – estimate	660.96
TOTAL	2,014.18

On November 2, 2010, the landlord gave the tenants a hand-written note with a list of dates the landlord planned on showing the unit to prospective occupants. The landlord planned on entering the unit every day of the month except November 13, 15, and the 20th. The hours of possible entry were for periods of 4 hours on some days and up to twelve hours on other dates. A copy of the note entitled "Notice to show" was provided as evidence.

The tenants submitted that this notice given on November 2, 2010, resulted in a loss of quiet enjoyment equivalent to 1 month's rent. The landlord stated that since November 2, 2010, he has actually entered the rental unit on 1 occasion. The landlord did not deny that he had threatened to call the police if he was denied access to the rental unit. The landlord stated that on the one occasion he showed the unit, separate, prior written notice was provided to the tenants by email; the tenants denied this had occurred. The tenants were not aware of any entry that had been made by the landlord between November 3 and the day of this hearing.

On June 10, 2010, the tenants saw a mouse in their ground floor rental unit. A call was placed to the landlord who the tenants submitted did not respond. On June 16 the

tenants again saw a mouse but did not report this to the landlord. They did purchase traps for the unit. On June 17 the tenants again saw a mouse and called the landlord; and as the tenants are fearful of mice they stayed in a hotel for the night. A receipt was submitted as evidence of their claim.

The landlord stated that all messages left by the tenants failed to contain any detail for the reason of their calls. The landlord returned calls promptly. The landlord warned the tenants they should not leave the doors open while they were outside smoking, as mice could gain access, given the ground floor entry. The landlord testified that he was first called about the mouse on June 19 and that he attended at the unit on June 22 to investigate. On June 23 the landlord plugged holes where access might be possible, put out bait and tightened door jambs.

On August 4, 2010, at 11 p.m. the male tenant went home to find “thousands” of ants flying in the rental unit. As the ants were discovered late in the evening of August 4, the male tenant went to a hotel for the night; the female tenant stayed elsewhere. On August 5 the tenants called the landlord and on the following day the landlord attended at the rental unit. He and the male tenant were able to locate 2 ants, which the landlord took away for identification purposes. The tenants believed that the ants originated from the bottom of the fridge that was in their unit. The tenants supplied a hotel bill as evidence of their claim.

On July 27 the tenants reported a leak in their fridge; their call was not returned. On August 5, 2010, the tenants again left a message for the landlord who went to the unit and adjusted the temperature of the fridge. On August 7, the landlord attended at the rental unit and provided a new fridge.

On October 6, 2010, the tenants contacted the landlord as the new fridge had failed. The next day the landlord attended at the unit, determined that the fridge had malfunctioned and then arranged to have a technician come to the unit. As a technician could not come until October 12, the landlord placed the original fridge in the living room of the apartment. The tenants were upset that he had done this, as they believed the original fridge did not work and had been the source of the ants. The tenants removed the original fridge to the hallway of the building.

The tenants did not have a fully operational fridge until October 15, 2010. The tenants provided a list of food items from a grocery chain web site, totalling $330.48; they are claiming double that amount as they had to replace their food on the 2 occasions the fridge malfunctioned.

The landlord submitted that the original fridge had been assessed by a technician as being in working order and that the tenants chose to remove the unit from the apartment without using it to preserve their food while the new fridge was being repaired. On October 12, 2010 the technician determined that a part was required and that he would return the next day to complete the repair. The fridge was repaired on October 13,

2010. The landlord offered to replace any food items that the tenants had lost, but asked that they first provide receipts for those items.

The tenants did not supply the landlord with receipts as they did not trust the fridge and did not wish to again replace condiments and items that might spoil again.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the claim for loss of quiet enjoyment, frequent and ongoing interference by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment; every tenancy includes an implied covenant of quiet enjoyment. Residential Tenancy Branch Policy suggests that frequent and ongoing interference by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment. I find this to be a reasonable stance.

I find that the tenants have failed, on the balance of probabilities, to prove that they have suffered a loss of quiet enjoyment of their rental unit. The landlord's notice of entry was for an excessive period of time and unreasonable, but there is no evidence before me that entry, beyond one occasion, took place or that any disturbance occurred to the tenants. The notice was given to the tenants on November 2, 2010; the tenants applied for compensation for loss the next day and at the time of this hearing fifteen days had passed.

Even in light of the landlord's threat that the police could be called, I find that the tenants have failed to prove they have suffered a loss to such a degree that compensation would be contemplated. I find that the notice given did not result in any ongoing interference or frequent interference by the landlord.

During the hearing I explained section 29 of the Act to the parties. I Order the landlord to comply with section 29 of the Act, which provides:

> ***29*** *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
>
> > *(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
> > *(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

(i) the purpose for entering, which must be reasonable;
(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit;
(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b)

Given the notice issued on November 2, 2010, was unreasonable as it essentially demanded daily access to the unit; pursuant to section 62(3) of the Act, I Order the landlord to issue written notice to the tenants for access by one of the 2 following methods:

- 24 hours in advance of each pre-arranged showing; or
- One notice, for a period of time of no more than thirty days in advance; for access on 2 occasions each week, between the hours of 8 a.m. and 9 p.m., during a specific 2 hour time frame, for no more than 2 hours on each day for the purpose of showing the unit to prospective occupants.

The landlord is at liberty to enter the rental unit for any other reasonable purpose, as provided by the Act, but must be aware that entry for any purpose that is deemed unreasonable could result in a potential loss of quiet enjoyment to the tenants.

Section 32 of the Act provides, in part:

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The date the landlord was first notified of the mice is in dispute and I find, on the balance of probabilities that the tenants have failed to prove that the landlord did not respond when he was first made aware of the presence of a mouse. Further, there is no evidence before me that rental unit had thousands of ants enter.

I find the tenants have failed to provide any evidence that supports their claim that the landlord breached the Act through a failure to comply with health or housing standards required by law. There is no evidence before me that the rental unit was uninhabitable; a mouse was seen on 3 occasions and the tenants submitted they chose to inform the landlord after the 1st and 3rd sightings only.

There is evidence before me that the landlord did respond to the concerns reported, in an attempt to control entry by mice and the placement of bait. When the landlord and tenant searched for ants, only 2 could be located in the rental unit; a number that I find fails to support the claim that there were thousands of ants in the unit. Therefore; in the absence of evidence that there has been a breach of the Act, I find, on the balance probabilities, that the hotel costs claimed are not supported and are dismissed.

In relation to the loss of food; the tenants rejected the offer by the landlord to replace food lost through the provision of receipts for items they had purchased. Section 7 of the Act requires a claimant to minimize any loss that they claim and I find, on the balance of probabilities; that the tenants failed to minimize their loss by providing the landlord with receipts that proved they had purchased food. I find that the tenant's claim they chose not to replace food, due to their fear that the fridge would again fail, was not reasonable. The tenants must have purchased some food after the fridge failed, yet chose not to provide proof of payment so that the landlord could issue reimbursement. The tenants have not provided proof of payment as evidence of their claim; only a list of items and their cost from a grocery chain web site. The landlord offered to replace food purchased and there is no evidence before me that, if the fridge failed again, that the landlord would not again extend this offer to the tenants.

Therefore, I find that the tenant's monetary claim is dismissed.

	Claimed	Accepted
Hotel cost – mouse	147.37	0
Hotel cost – ants	205.85	0
Loss of food – estimate	660.96	0
TOTAL	2,014.18	0

As the tenant's application has some merit in relation to the notice of entry given by the landlord, I find that they are entitled to filing fee costs in the sum of $50.00.

Conclusion

The tenant's monetary claims are dismissed.
The landlord has been Ordered to provide the tenants with notice of entry for the purpose of showing the unit, in one of two forms as described in my analysis. The landlord is at liberty to provide notice, as required by the Act, for entry for any other reasonable purpose.

As the tenant's application had some merit the tenants are entitled to the $50.00 filing fee and based on this determination I grant the tenants a monetary Order in that sum. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 23, 2010.

Dispute Resolution Officer