Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with a joint application by the tenants for a monetary order and an order that the landlord comply with the Act.

Originally E.S. was among the applicants but withdrew her claim and as such her claim has not been considered. There was some discussion over whether E.S.'s affidavit should be considered. The landlord took the position that as E.S.'s claim had been withdrawn, her affidavit should not be admissible. E.S. issued several letters, one of which advised that she did not wish to be part of the dispute and another stating that she desired her affidavit evidence to be included in support of the tenants' claims. The tenants each made individual applications which they requested to be joined not just for convenience, but to demonstrate that the landlord's behaviour had a broad effect among occupants of the building in question. I see no reason why E.S.'s affidavit should not be admissible as it relates not just to her claim but to the others as well.

The hearing was held over a 3 day period. On the first day of this hearing, the tenants indicated that they wished to present evidence of an ongoing pattern of behaviour by the landlord extending back to 1997. The initial statement of claim did not indicate that incidents occurring prior to 2010 would be part of the tenant's claim and I ordered that the matter be adjourned to give the tenants opportunity to file a further particularized statement of claim in order to permit the landlord opportunity to prepare an answer to all of the allegations raised.

The tenants filed their claim on June 22, 2010. The next day, the landlord issued a letter regarding storage lockers which the tenants seek to include as part of their evidence and the impact of which they wish to have considered as part of their claim. The landlord objected to

the inclusion of this evidence as their pleading had not been amended to capture events occurring after June 22. The tenants argued that the June 23 letter was one of a string of events which all contributed to the same loss.

I consider the claim for loss of quiet enjoyment, particularly in these circumstances where the loss allegedly occurred as a result of a series of events, to be analogous to a tort claim which includes a claim for pain and suffering. In such cases, pain and suffering which occurs after the time the writ is filed is considered up to the date of the assessment. Although the events described by the tenants are discrete and any one may found a separate claim, they also represent a chain of events which worked cumulatively to produce the effect claimed by the tenants. I find it appropriate to consider the June 23 letter as part of the tenants' claim.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Are the tenants entitled to an order that the landlord comply with the Act?

Background and Evidence

The tenants are or were occupants of an apartment building known as E.T.. The parties agreed that the landlord purchased E.T. in 2007. All of the applicants resided in the building at the time the purchase occurred. E.T. has an indoor swimming pool, 2 elevators and laundry facilities in the basement and on the 12th, 15th and 17th floors.

The tenants each claim $5,000.00 for loss of quiet enjoyment. The tenants provided extensive evidence regarding a reduction in services since the landlord assumed ownership of E.T. but specified that although they are aware they may bring a claim for loss resulting from a reduction of services, the present claim is focused solely on their loss of quiet enjoyment as a result of the behaviour of the landlord's agents which culminated in certain correspondence described below. The tenants stated that the evidence regarding reduced services was provided in order to provide background information as well as establish a pattern of behaviour and that it also contributed to a loss of quiet enjoyment.

The tenants gave evidence that shortly after the corporate landlord purchased the building, several tenants were served with notices to end their tenancy for cause related to pet

ownership. Those tenants successfully disputed the notices and as a result their tenancies continued. Through affidavit evidence several tenants stated that they had concerns when the landlord assumed ownership of E.T. as they had heard of the landlord's reputation, which they implied to be poor.

The tenants testified that when the landlord took over the building it dismissed the resident manager and replaced her with B.B., who treated tenants with disrespect and was non-responsive to their requests and needs. Specific examples of the manager's poor attitude were cited, including yelling at tenants, failing to respond promptly or at all to service requests, giving insufficient notice of entry and generally abusing his authority. The tenants stated that B.B.'s behaviour amounted to persecution and intimidation. The tenants alleged that the landlord's general manager, A.W., was similarly unresponsive to complaints and threatened several tenants with eviction where no threat was warranted.

A.W. testified that the resident manager who had acted under the previous landlord was not dismissed, but retired and was replaced with B.B. who was an experienced manager working in several other buildings owned by the landlord. A.W. acknowledged having received complaints about B.B. and testified that in some cases they responded to complainants and addressed the issues raised.

On or about March 27, 2010, the landlord delivered to each resident in E.T. a document entitled "Resident Opinion Poll – Building Improvement Scheduling" (the "Opinion Poll"). The Opinion Poll addressed 9 proposed repairs or renovations and asked tenants to respond with their preferences on various issues. A summary of the Opinion Poll and the questions posed is as follows.

1. Fitness Facility: The landlord had chosen to decommission the swimming pool and was considering constructing a gym facility. The Opinion Poll asked the tenants to indicate whether they would like to keep the pool, if they would prefer a new gym or were indifferent.

2. Laundry Facilities: The basement laundry facilities would have new operational hours and facilities on other floors would be decommissioned. Tenants were given 2 proposed hours of operation from which to choose.

3. Parkade Retrofit: The landlord anticipated that structural improvements to the parkade may be required and closures initiated. Tenants were given 2 proposed hours of operation from which to choose.

4. Boiler Retrofit: The boiler would be upgraded and the landlord estimated it would take from 3-6 months to complete the upgrade. Tenants were given 2 proposed timeframes in which water shut-offs may occur. Both options were Monday through Friday, the first from 8 a.m. to 2 p.m. and the second from 2 p.m. to 6 p.m.

5. Balcony Upgrades: The landlord advised that balconies would be "modernized" and would be closed for up to 2 months, during which time belongings would have to be removed from the balconies by tenants.

6. Elevator Cab Upgrades: To upgrade the elevators for safety and aesthetic purposes, only 1 of the 2 elevators would be operational for a period of 4-6 months. The landlord advised that the elevator would also be used as a service elevator by tradespersons and tenants were given 2 service times from which to choose.

7. Intercom System Upgrades: The outdated intercom would be replaced with a new system which would allow visitors to ring the tenants' telephones for entry. Tenants were advised that in-suite service would be required and were given 2 service times from which to choose.

8. Major Plumbing Re-Pipe: The landlord planned to remove and replace all plumbing in the building and advised that the entire project would take 4-6 months. Tenants were advised that each suite would have washroom and kitchen areas taken out to permit tradespersons access to plumbing risers and that consistent running would not available during that time. Tenants were given two options. The first was to stay with friends or relatives for up to 2 months during the renovation period and the second was to transfer to another building owned by the landlord.

9. Fire Panel Upgrades: The fire panel would be upgraded and access to suites would be required. Tenants were given 2 service times from which to choose.

The tenants gave evidence that they experienced considerable confusion and distress as a result of the Opinion Poll. With respect to the decommissioning of the laundry rooms on upper floors and limited operating hours of the basement laundry room, the tenants interpreted the Opinion Poll to mean that there would be a 70 – 80% reduction in services. The tenants were unsure whether the upgrades to the parkade would affect above ground

parking and whether their costs to park elsewhere would be reimbursed or if they would receive a corresponding rent reduction.

The tenants expressed concern that the water shut offs resulting from the boiler retrofit would significantly impact them and were not sure how frequently those shut offs would occur. The elevator upgrades caused the tenants concern in that service would be reduced by more than 50% as not only would only one elevator be functioning, but they anticipated it would be used frequently by tradespersons.

The most significant of the tenants' concerns involved the plumbing re-pipe. Tenants gave evidence that they worried they would be unable to find alternative short term accommodation as it seemed clear they could not remain in their units.

On or about July 8, B.M., the company retained to perform the plumbing re-pipe, held an information session in which they gave the tenants specific information as to how the work would affect each. B.M. explained that they would be able to perform the work in a non-invasive fashion which would pose minimal disruption to tenants, with B.M. requiring access to units from 5 minutes to 1 hour on any given day and that for up to a 2 week period there would be minimal disruptions in water service but that these disruptions would not be continuous for that period.

A number of the tenants contacted the landlord's agents in an effort to obtain more details about the proposed work but the affidavits show that few received responses and those who did were told that the landlord was not yet able to provide further details.

The tenants indicated that the perceived lack of response to their inquiries led to increased concern and a sense of extreme frustration.

The parties agreed that on May 4 the landlord issued a letter advising as follows:

> We are still in the midst of completing all necessary due diligence to put together a comprehensive construction package for review by our management team. Once all necessary site meetings, estimates, planning and permits are in place we will be able to provide a construction timeline to all residents.

The parties agreed that on or about May 19 the landlord distributed to the tenants a letter (the "May 19 Letter") which communicated one of four messages. The May 19 Letter advised 9 of the applicant tenants that they would be receiving a notice which would end their tenancies on August 31, 2010. 3 of the applicant tenants were advised that they would be receiving a notice which would end their tenancies on September 30, 2010. 7 of the applicant tenants were advised that they would be receiving a notice ending their tenancies on October 31, 2010 and 1 of the applicant tenants were advised that her tenancy would not be ended.

The May 19 Letter offered professional moving services, the option of transferring into another building owned by the landlord and discounted rents for those who chose to return to the building after renovations were complete.

A.W. testified that the corporate landlord owns some 47 buildings in British Columbia and more buildings in other provinces. The landlord desires that each of its rental units be the same regardless of the city or building in which it is situated and when a building is acquired, the landlord determines what renovations are required in order to bring the units into compliance with the standardized plan. The desire of the landlord was that cosmetic facets of each rental unit, including appliances, cupboards, countertops, flooring and fixtures, should look alike throughout all of its properties and that the mechanical systems, including the boiler and plumbing, be upgraded and maintained so as to leave a minimal carbon footprint.

A.W. testified that the Opinion Poll was conducted in order to forewarn the tenants of impending renovations and to determine whether any of the rental units would be voluntarily vacated during the time the units were being renovated. The landlord referred to a Supreme Court decision which addressed a tenancy in another building owned by the landlord. In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 ("*Berry and Kloet*"), the tenants were served with a notice to end tenancy because their unit had to be vacant in order to perform renovations. Williamson J. stated that where it was possible to carry out renovations without ending a tenancy, particularly when affected tenants volunteered to vacate while renovations were underway, the tenancy should be preserved. A.W. stated that some tenants arranged for renovations to occur while they were away on vacation.

The tenants gave evidence that the May 19 Letter caused them considerable anxiety. 7 of the applicant tenants vacated their rental units. Those tenants who were advised that their tenancies would be ending stated through their affidavits that they took the May 19 Letter to be an eviction letter and referred to it as such throughout the hearing.

A.W. testified that because the tenants filed their applications for dispute resolution on June 22, the landlord put a moratorium most of the intended renovations and that none of the tenants were issued a notice to end tenancy. The landlord has proceeded with the plumbing re-pipe and expects to be finished within several months. The tenants confirmed that while there has been some disruption as a result of the plumbing re-pipe, it has been minimal and did not involve the disruption suggested by the May 19 Letter.

The tenants testified that on June 23 they received a letter from the landlord (the "June 23 Letter") advising that they wished to update locker records, asking residents to advise the landlord of their locker numbers and advising that anyone who did not have a locker agreement would need to enter into such an agreement and could expect to be charged for the locker. The letter further advised that any lockers which were not identified as belonging to tenants would be emptied and locked. The tenant J.B. advised the landlord of the lockers he was using, stated that the cost of the locker was included with his tenancy agreement and requested in writing on two occasions confirmation that the landlord would not require him to enter into a separate agreement. J.B. received no response.

S.G., the property manager who oversees E.T., testified that the purpose of the June 23 Letter was to determine the source of their revenue stream as the landlord did not have accurate records from the previous owner as to who had lockers, whether those costs were included in tenants' rent and also did not know whether all tenants who had lockers assigned were using or required them. The landlord also wished to remove items which had been abandoned by tenants who no longer resided in the building. S.G. asserted that there was no intent to charge tenants for lockers for which there had previously been no charge.

A lack of maintenance to the building and building grounds were among the tenants' complaints, including termination of services and restriction of access to the swimming pool, failing to adequately clean the building and maintain landscaping, terminating access to the

rooftop deck and ceasing to clean outside windows which had previously been cleaned by the landlord. The tenants were also concerned that garbage and recycling were not collected as frequently as they had previously been and that the resident manager had limited availability to respond to tenant concerns.

S.G. testified that the landlord was unaware of the repair history of the swimming pool, it had small leaks, the pumps and heating system were aged and parts were difficult to obtain and the pool was used infrequently. She stated that it was closed only when required for repairs or maintenance. S.G. further testified that the company had a mandate to replace swimming pools with gyms.

S.G. stated that the resident manager was responsible to clean and that upon receiving complaints from tenants regarding lack of cleaning, the landlord hired a woman to work 80 hours per month to clean. S.G. testified that the landlord has retained 5 landscapers to service 47 buildings and that those workers worked at E.T. on a monthly basis. S.G. maintained that the landlord has increased service recently and stated that some of the complaints about landscaping may have been from an occasion in which an irrigation line malfunctioned and plants died before it was repaired.

The parties agreed that there was a rooftop deck on the building and that prior to the current landlord taking ownership of the building, tenants had been permitted to access that deck. The door permitting access to the roof is now locked. A.W. testified that the landlord had a company policy that residents were not permitted on the rooftop as there was a concern that a fall might occur. A.W. expressed concern that tenants could access the elevator room on the roof which had moving parts and cables, also posing a safety risk although he acknowledged that in order to access the elevator room one had to ascend a further flight of stairs which was secured by a locked door. A concern that transients would attempt to access the elevator room was also expressed.

With respect to window cleaning, the tenants had alleged that all of the outside windows except for the balcony doors had been cleaned by the previous landlord but were not cleaned by the current landlord. The tenants expressed concern that accessing some of the windows involved leaning over the balcony railing, which posed a safety risk. S.G. replied that the

windows in question were accessible from the balcony and therefore the landlord was not obligated to clean them.

S.G. testified that garbage used to be collected once each week and now was collected three times each week. While recycling is the city's responsibility to collect, S.G. indicated that the landlord would be prepared to investigate the possibility of increased service if required.

S.G. stated that the resident manager had regular work hours and that if tenants had concerns outside the manager's working hours, tenants could call an emergency services number which was manned by an operator who would obtain assistance for tenants as required.

Tenants also complained that the laundry machines had been changed to accept only tokens rather than coins and stated that this posed a hardship when tokens broke in the machines and tenants could not obtain a refund unless all pieces of the token were presented.

S.G. testified that a token system was implemented as a part of the standardization among the landlord's properties and reduced the likelihood of parties breaking into the laundry machines to steal coins as well as permitting the landlord to monitor usage of the machines without cash.

The tenants also took issue with charges for visitor parking and stated that whereas previously guests had been able to park without a pass, the landlord implemented a system whereby passes had to be purchased and displayed. Vehicles which did not display a valid pass were towed.

S.G. testified that there had been problems with residents and people who lived nearby using guest parking spots as permanent areas, so the landlord implemented the guest pass system in order to keep the guest parking areas available for guests. S.G. testified that the landlord's buildings all have a guest parking system.

Considerable discussion took place about the tenants' allegation that the landlord was seeking to end the tenancies of tenants who paid lower rents while preserving the tenancies of those who paid higher rents. The tenants conducted an informal survey in which they

approached residents and asked how much rent they paid and whether the May 19 Letter received by each had advised that they would be receiving a notice to end tenancy.

The survey results show that none of the tenants in renovated units were advised that their tenancies would be ending and the tenancies of tenants in just 5 un-renovated suites would be preserved. A.S., who conducted the survey and tabulated the results, testified that he either asked the tenants surveyed or looked around in their suites to determine whether renovations had taken place.

The survey results further show that with the exception of 2 units, all tenants in units for which less than $1,200.00 per month in rent was payable were advised that their tenancies would be ending. Of those who paid $1,200.00 per month or more, 3 tenants who lived in apparently un-renovated suites and were paying between $1,774.00 and $1,797.00 per month in rent were advised that their tenancies would be ending.

The landlord questioned whether the survey accurately represented whether suites were truly renovated or whether A.S. had observed minor cosmetic changes which made the suites appear to have been renovated when in fact further renovation was required.

Analysis

Section 28 of the Act provides as follows.

28. Protection of tenant's right to quiet enjoyment

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

28(a) reasonable privacy;

28(b) freedom from unreasonable disturbance;

28(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

28(d) use of common areas for reasonable and lawful purposes,free from significant interference.

The tenants urged me to apply the definition of quiet enjoyment as found in the Canadian Law Dictionary (a citation was not provided):

> Quiet enjoyment: It is a covenant contained in a lease or a grant whereby the person leasing or granting assures the lessee or grantee that the latter can peaceably and quietly enter upon, have, hold, occupy, possess and enjoy the lands and premises conveyed and its appurtenances and enjoy the same without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by a grantor or lessee, or his heirs or successors or any person claiming or to claim by, from, under in or in trust for him, them or any of them.

The landlord urged me to consider *Evergreen Building Ltd. v. IBI Leaseholds Ltd.*, 2008 BCSC 235, a case addressing a commercial tenancy in which Kelleher J. stated:

> A breach of the covenant of quiet enjoyment requires proof of an interference with the use and enjoyment of the leased premises which is substantial and of a grave and permanent nature such that it constitutes a serious interference with the ability of the tenant to exercise its right of possession.

Residential Tenancy Policy Guideline #6 provides direction in determining whether the covenant of quiet enjoyment has been breached. It references the definition in Black's Law Dictionary, Sixth Edition, 1990, p. 1248 ("Blacks"), which in my view has appreciable differences from the Canadian Law Dictionary definition as cited by the tenants. The definition states that the covenant of quiet enjoyment

> promis(es) that the tenant ... shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.

I find that the definition in Black's is the most applicable to a residential tenancy. The comments of the court in *Evergreen Building* are most appropriately applied to commercial tenancies in which business is conducted in the rented premises and where it is unlikely that tenants are using the premises for the conduct of their personal lives. While a tenant in a residential tenancy is certainly entitled to exercise a right of possession, their rights extend to include a right to freedom from interference in their personal lives unless the manner in which they lead their lives results in the disturbance of others or damage to the landlord's property.

I find that the position of the landlord places too great a restriction on the covenant of quiet enjoyment as contemplated under section 28 of the Act while the tenants' position is too broad as it prevents landlords from exercising a right of eviction. I do not accept that a breach of the covenant of quiet enjoyment must be of a permanent nature as appears to be the case for commercial tenancies.

Prior to embarking on an analysis, it is important note that Residential Tenancy Policy Guideline #6 provides that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. In their affidavit evidence, several tenants suggested that the landlord should not be permitted to perform upgrades which the tenants did not desire or consider necessary. The landlord as the owner of the building has the right to improve its property however it sees fit, so long as those improvements do not prevent it from fulfilling its obligations under the Act and tenancy agreement. The landlord is not obligated to seek the approval of tenants before performing renovations. The question of whether renovations such as installation of a gym or replacing the intercom system were required is irrelevant. The landlord is at liberty to make such improvements.

The tenants outlined what they characterize as a pattern of behaviour by the landlord which they claim resulted in their loss of quiet enjoyment. Although the landlord assumed control of E.T. in 1997, it appears that the tenants did not seek remedies through the Residential Tenancy Branch until the May 19 Letter was issued. I appreciate that this failure to act may reflect nothing more than a reluctance to "rock the boat," as it were, and may even reflect an optimism on the part of the tenants that things would improve over time. However, given the number of tenants who now claim they were affected by the issues described above, it seems that even taken together they did not amount to a significant interference prior to the issuance of the Opinion Poll. Indeed, at the hearing the tenants acknowledged that prior events were minor.

Clearly the Opinion Poll changed the landscape of the relationship between the landlord and the tenants. While to a non-resident the Opinion Poll can be taken to show the landlord's

commitment to upgrade the building which presumably would benefit the tenants, I accept that for the residents of the building, it assumed a more sinister air.

The Opinion Poll clearly communicates that during a defined period of time, there would be reduced hours of service for the parkade and the elevator, water shut-offs would occur and balconies would be unavailable for use.

The Opinion Poll paradoxically stated that the pool would be decommissioned but asked tenants whether they would prefer to keep it and also advised that the operational hours of the laundry facilities would be reduced, presumably permanently.

I find that the tenants were justifiably concerned upon receiving the Opinion Poll. While it showed that the landlord intended to upgrade the building, it also left far too many questions unanswered. A.W. admitted that he was not able to provide further details to the tenants who requested them and I find that this inability to provide those details caused further distress to the tenants. It appears that the landlord recognized that the tenants were distressed as it issued a letter on May 4 to advise that a construction timeline was not yet available but would be forthcoming.

The landlord acknowledged that this was the first time such a survey had been issued in advance of renovations to a building and acknowledged that the Opinion Poll was not as informative as it should have been. I recognize that the lack of information was upsetting to the tenants and it is clear that the landlord should have communicated much earlier than May 4 that it was still finalizing plans and unable to release more details.

The most troubling aspect of the Opinion Poll, in my view, is the portion that addresses the plumbing re-pipe. It states that the project would last from 4-6 months, that each suite would have its washroom and kitchen facilities at least partially removed and that consistent running water would not be available “at this time.” It is uncertain whether “this time” refers to the 4-6 month duration of the project or merely the period in which the individual suites’ washroom and kitchen facilities were removed. The Opinion Poll went on to ask whether tenants could stay with friends or would prefer to transfer to another building.

In light of the decision in *Berry and Kloet*, it was reasonable for the landlord to canvass the tenants to determine where renovations could be carried out without ending the tenancy. I find that *Berry and Kloet* placed a burden on the landlord to determine whether tenancies could be preserved in cases where vacant possession was required to carry out renovations.

The intimation in the Opinion Poll was that vacancy would be required for up to 2 months. The Opinion Poll did not address the renovation of individual suites, which the landlord testified would require vacant possession, but merely addressed replacing plumbing for which B.M. stated they would require . A.W. acknowledged that he had frequently worked with B.M. to perform similar plumbing re-pipes in other buildings and knew how efficiently that contractor was able to perform the required labour. At the hearing the parties agreed that the plumbing re-pipe was taking place while most of the suites were occupied and that there was minimal impact on the tenants.

I can accept that the remainder of the Opinion Poll was designed to inform the tenants of the impact the proposed renovations would have and to determine their preferences where reduced service hours were anticipated. I find that the landlord should have been more forthcoming to answer questions arising from the Opinion Poll, particularly for those issues which were unclear and about which the landlord received inquiries, but I find that this in itself did not lead to a breach of the covenant of quiet enjoyment. I find that the landlord deliberately misinformed the tenants regarding the impact of the plumbing re-pipe. I find that given their previous experience with the contractor who performed the plumbing re-pipe the landlord knew or should have known that it would not be necessary for the rental units to be vacated for a period of up to 2 months to permit access to plumbing features during the plumbing re-pipe. There was no reason for the landlord to inquire whether tenants would voluntarily vacate their units when B.M. would only require access to those units for up to one hour a day over a two week period.

It is clear to me that the May 19 Letter was not an eviction letter as characterized by the tenants. In order to issue a notice to end tenancy under section 49(6)(b) the landlord had to first have all required permits and approvals in hand. The May 19 Letter clearly states that the landlord would “be issuing you with a notice of eviction” which I find the tenants should

reasonably have understood to mean that a legally enforceable document was forthcoming. Landlords are under no obligation to provide tenants with a forewarning of a notice of eviction but should not be penalized for having done so.

The May 19 Letter had the effect of possibly placing the landlord in a worse position than if it had just issued a notice to end tenancy as the letter promised moving subsidies, assistance in securing alternative accommodation and discounts for those who chose to return, none of which the landlord was obligated to offer.

I am unable to draw the conclusion that the landlord acted with malicious intent in issuing the May 19 Letter. While clearly some of the tenants misread the May 19 Letter as a notice of eviction, I find that this conclusion was unreasonable upon a careful reading of the letter. While the tenants expressed concern that their tenancies may not be secure, the landlord had the right to issue notices to end tenancy if it was of the opinion that renovations could not be effected without vacant possession and upon receiving such a notice, the tenants would have the right to put the landlord to the burden of proving grounds to end their tenancies. The tenants understandably wished to feel secure and believe that their tenancies could not be ended without them having given the landlord cause to do so. However, in limited circumstances the Act permits landlords to end tenancies even where tenants have complied with all of their obligations under the Act. I find that despite the effect a misreading of the May 19 Letter had and regardless of the concerns that the tenants had that their tenancies may not be secure, the May 19 Letter did not lead to a loss of quiet enjoyment as contemplated under the Act.

The tenants alleged that the purpose behind the landlord's proposed renovations to each rental unit was to raise the rents on those units. That allegation falls outside the scope of this claim as no notices to end tenancy were served and as I have found that the May 19 Letter could not reasonably have been interpreted as a notice of eviction. These allegations could have been made at a hearing addressing the tenants' dispute of notices to end tenancy but are irrelevant to the issues at hand.

Turning to the June 23 Letter, I find that regardless of whether the landlord's intent was to inventory the lockers or to induce the tenants to pay for lockers which were included in their

rent, if no effect is felt by the tenants I cannot find that this event contributed to their loss of quiet enjoyment. Only 3 of the tenants, J.B., R.K. and B.Y.W., mentioned this letter in their evidence and 2 of those tenants immediately contacted the landlord to advise that they would not be subject to additional locker charges as the charges were included in their rent. The third tenant was unaffected as she vacated her rental unit. I find that while the June 23 Letter may have contributed to the bad feelings these tenants had about their landlord, it did not diminish their loss of quiet enjoyment or if it did, it was not to a degree which would attract compensation.

Taking all of the events into consideration, I find that the events preceding the Opinion Poll were minor in nature. Some of the events indicate that the landlord was not as diligent as it should have been in order to fulfill its obligations under the Act and some events are simply the result of the building having changed hands and new procedures having been implemented. It is unnecessary for me to make findings of fact as to which events may have been violations of the Act because I find that they are so minor that any resultant loss of enjoyment is negligible. Further, at the hearing the landlord provided reasonable explanations as to why many of the changes were made, particularly with respect to the swimming pool, rooftop deck and the introduction of laundry tokens and visitor parking passes.

I have found that the communication in the Opinion Poll was designed to make the tenants believe the impact of the plumbing re-pipe would be much greater than it actually was. I find that this misinformation caused the tenants to believe that while their tenancies may be secure, it was very possible they would have to find alternative accommodation for a significant period of time, which was not the case.

The tenants had a right to quiet enjoyment, which included a right to be free from persecution and intimidation from the landlord. Regardless of whether intimidation was the intent of the Opinion Poll, I find that the misinformation as described above had that effect on the tenants and that as a result they were deprived of the right to live in an environment free from intimidation.

The landlord argued that the tenants' claim for loss of quiet enjoyment may be characterized as stress and emotional distress, which would fall under aggravated damages. As the tenants did not specifically plead aggravated damages, the landlord argued that the claim cannot succeed. I agree that stress and emotional distress generally fall under a claim for aggravated damages, but I find that they are not exclusively in that realm. Because the concept of quiet enjoyment is largely subjective, the tenants had little choice but to frame the result of the breach in terms of its emotional impact. I therefore do not accept the landlord's argument that the claim should be dismissed on this basis.

Having found that the covenant of quiet enjoyment was breached, to determine an appropriate award I must consider the effect of the breach. While a number of tenants vacated their rental units, all of those who did so acted after having read and misinterpreted the May 19 Letter. I find that the Opinion Poll did not in itself cause those tenants to end their tenancies. I believe that the impact of the Opinion Poll was relatively similar amongst the applicant tenants and therefore it is unnecessary to address the quantum of the award on an individual basis.

The tenants were intimidated by the false representation of the impact of the plumbing re-pipe and lived under the burden of that misinformation for approximately 3 full months, from March 27, the date on which the Opinion Poll was issued, until approximately July 8, the date on or about which B.M., the contractor, provided accurate information. While some of the tenants may have vacated prior to the information session provided by B.M., I find the difference of a few weeks to be insignificant. I find it appropriate to award the tenants $150.00 for each of those three months for a total award of $450.00 per tenant.

I recognize that this award is arbitrary. However, in the words of McEachern C.J.B.C. in *Begusic v. Clark, Wilson & C.* (1991), 57 B.C.L.R. 92d) 273 at 290 (B.C.C.A.), "The assessment of damages is not a precise science; it is not even a calculation". I find that $450.00 will adequately compensate the tenants.

I grant each of the tenants a monetary order under section 67 for $450.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that

Court. Tenants whose tenancies have continued may deduct this sum from future rent owed to the landlord.

The claim for an order that the landlord comply with the Act is dismissed as no details of this claim were provided.

Conclusion

The tenants are each awarded $450.00. The claim for an order that the landlord comply with the Act is dismissed.

Dated: January 12, 2011

Dispute Resolution Officer