Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LAT, RR, O, FF

Introduction

This hearing dealt with 3 applications from the tenant, one application for each of the 3 rental units she rents. The tenant seeks a monetary order, a rent reduction and authorization to change the locks to the rental unit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the tenant entitled to a rent reduction?
Should the tenant be permitted to change the locks to the rental unit?

Background and Evidence

The tenancy in question began in 2004 in unit #1 and since it began, the tenant increased her living area by also renting units 4 and 5, using all three for residential purposes. The tenant accesses the various units through a staircase and hallways which are common areas shared with at least 3 other rental units. Each unit is separately metered for hydro consumption and the landlord pays for hydro consumption in common areas.

The tenant had previously filed for dispute resolution which resulted in a hearing on September 26, 2011. The tenant had requested compensation for loss of quiet enjoyment and an order permitting her to change the locks. The tenant's claims were dismissed in a decision issued by a Dispute Resolution Officer (DRO) on the same day of the hearing.

The tenant seeks to recover the equivalent of one month's rent for each of the units in question as compensation for loss of quiet enjoyment. The tenant testified that in the period from January 1 – 24, the landlord attended at the residential property 16 times. She stated that on January 4 he installed a video camera as part of a security system and that she believed another tenant, G.G., had access to the video feed. She argued

that because it was primarily she and one other tenant who used the front door upon which the camera was trained, she believed the sole purpose of the camera was to intimidate and harass her. She further claimed that a mirror installed in the hallway was designed to give the camera a view inside one of her rental units and stated that she took down the mirror a number of times and acknowledged that she or her guests had covered the camera at times. She argued that because she has to access her 3 units using the hallway, she has had to ensure that she and her guests are fully clothed when moving between units.

The landlord testified that G.G. did not have access to the video feed but that wiring went into his suite simply because it had to be connected to the internet. He testified that there was an increased need for security, partly because the tenant had engaged in illegal activity in the past and he had had difficulty with her guests and clients disturbing other tenants. He claimed that the mirror simply broadened the scope of the camera's view and he objected to the tenant covering the camera and moving the mirror.

The tenant acknowledged that she is an activist, advocating the decriminalization of marijuana and that in the past, she has had guests to the rental units to sample products made with marijuana. She claimed that currently, she is featured in with a television program in which she cooks with marijuana.

The tenant alleged that G.G. has an audio recording device installed at his front door and that he is in the employ of the landlord and is illegally recording her. The landlord denied any knowledge of the audio recording device and although he acknowledged that he has on occasion hired G.G. to perform work around the residence, he asserted that he had not asked G.G. to record the tenant.

The tenant testified that the hallway is unreasonably cold and that she has placed a space heater in the area in order to make the temperature tolerable. She stated that the landlord had covered up the outlets in the hall that she had used and had for a month turned off the heat in the hallway. The tenant's witness F.B. also testified that the heat had been turned off for 8 days.

The landlord denied having turned off the heat for any period of time. He testified that the space heater posed a danger as it required four times more amperage than was available through the electrical outlet she used. The landlord confirmed the arranged for his electrician to cover the electrical socket and testified that in mid-January 2012, he discovered that the cover over the socket had been removed. On January 13 He wrote a letter to the tenant instructing her not to tamper with the socket further. The tenant denied having tampered with the socket.

The tenant claimed that while the heat in the hallway was turned off, a pipe burst and water was “raining” into the hallway. She emailed the landlord on January 19 about the issue as well as an unpleasant odour. She testified that the landlord did not repair the leak for 2 days. At first she alleged that the pipe burst because of the lack of heat, but at the hearing acknowledged that the explanation provided by the landlord’s plumber, that a frozen drain outside the building had caused the problem, was probably accurate. The landlord testified that January 21 was the earliest the plumber could attend at the unit. The tenant testified that while the leak had stopped, the ceiling in the hallway was still stained.

The tenant testified that on a number of occasions there has been construction material stored outside the residence which blocked her access to the area where she locked up her bicycle. She stated that she repeatedly asked the landlord to move the material and a number of times ended up moving it herself. At one point, the construction material was there for 3 months.

The tenant testified that she placed a bell on the front door and the landlord has removed the clapper 7 times.

The tenant testified that since June of last year, she has received more than 30 notices and letters from the landlord, all falsely accusing her of various things and many threatening eviction.

The tenant claimed that all of the foregoing caused her to lose quiet enjoyment of the rental unit.

The tenant testified that she wants to have an order permitting her to change the locks on the rental unit because she is concerned for her safety because she is persuaded that G.G. has access to the video footage from the surveillance cameras. She further claimed that the landlord has been on the fire escape outside her exterior doors without notice and without reason. The landlord again denied that G.G. has access to footage from the cameras and stated that he needs occasional access to the fire escapes in order to perform maintenance, clean the eaves and chase away racoons.

The tenant seeks a rent reduction because early in the tenancy, she had been hired to perform cleaning services in the common areas and lawn care outside the residence, but in or about 2005 these tasks were given to another tenant, J.Y., who had not vacuumed inside the residence. She further testified that in September 2011 she had been denied access to the front yard, which had been preserved for the exclusive use of J.Y. She stated that she had previously been permitted to access this area. J.Y. testified that throughout his 7 year tenancy he has maintained the yard and sidewalks

outside the residence and further testified that when he moved into his rental unit, exclusive use of the front yard was a term of his tenancy agreement. The landlord testified that J.Y. has exclusive use of the front yard because the tenant's friends had come to J.Y.'s door to purchase product from the tenant and had harassed J.Y. in the process.

The tenant also seeks to recover the filing fees paid to bring her applications.

Analysis

In his decision of September 26, 2011, the DRO had considered the tenant's claim for loss of quiet enjoyment up to that date. I find that anything occurring prior to that date is *res judicata*, having been considered and decided in a previous hearing. In that decision, the DRO had considered the BC Supreme Court decision in *Heckert v. 5370 Investments Ltd*., 2008 BCSC 1298 in which a landlord was found to have violated a tenant's right to privacy through the use of video cameras. The DRO distinguished the case because at the time, the cameras installed by the landlord were not operational. The cameras are now operational, but I find that the *Heckert* case is still distinguishable as in that case, there was no indication that the tenant had engaged in illegal or dangerous activity. By contrast, the DRO made a finding of fact by which I am bound, that the tenant had knowingly engaged in illegal activity. Because of this, I find that the landlord has reason to install video cameras in the common areas in order to protect his property and ensure that other tenants are not unreasonably disturbed should this activity continue. Because the landlord's actions are reasonable, I find that the tenant cannot claim loss of quiet enjoyment flowing from the installation and use of the cameras. I am not persuaded that the placement of the mirror is unreasonably intrusive. Although the tenant and her guests might prefer to have the freedom to walk through the hallways without being fully clothed, these are common areas and I find that the tenant has no reasonable expectation of privacy in these areas. I find insufficient evidence to show that G.G. has access to the video feed and I further find insufficient evidence to prove that the landlord has any knowledge of an audio recording device at G.G.'s door.

I am not persuaded that the landlord turned off the heat in the hallway for 8 days in January. The tenant and her witness both testified that the absence of heat was noticed on the coldest days of the year and it seems more likely to me that the chill in the air was as the result of cold air entering through the front door. I find that the tenant is not entitled to use a space heater in the hallway as this poses an electrical risk as well as a risk of obstructing the staircase. It also uses electricity which is paid by the landlord and I find that he should not be made to bear that burden.

I find that the landlord's repair of the hallway leak within 2 days was reasonable. Although the ceiling has not yet been repaired, I find that the resulting loss of quiet enjoyment over the past month is so minimal that it does not warrant compensation. I note, however, that the ceiling should be repaired and if it is not repaired within a reasonable time, the tenant is free to apply for compensation for loss of quiet enjoyment for a more extended period of time.

I accept that construction material was left outside the residence for an unreasonable period of time and that it obstructed the tenant's access to the rental unit. I find that the tenant is entitled to some compensation for this obstruction and I award her $50.00, which represents the global loss experienced collectively by all the units which she rents.

I find that the tenant is not entitled to place a bell on the front door of the residence, which is a common area, and that the landlord is entitled to disable the bell.

As the previous DRO considered evidence up to September 26, 2011, I will only consider evidence of letters served by the landlord after that date. I do not find this correspondence to be excessive or unreasonable and I find that no compensation is warranted as a result of it.

I find that the tenant has not established grounds to warrant an order permitting her to change the locks on the rental unit. There was absolutely no evidence before me that the landlord had attempted to illegally enter the rental unit and absent such evidence, there is no reason to order that locks be changed.

As for the request for a rent reduction, I am not satisfied that the tenant has given the landlord adequate notice that the hallway has not been adequately clean and absent such notice, I find that the tenant is not entitled to a rent reduction for a lack of cleaning in common areas. I find that the tenancy agreement for each of the units included unrestricted use of the front yard as a common area and I find that the landlord has restricted the use of the yard. I find that the tenant is entitled to reduce her rent for each unit by $10.00 per month. If the use of the front yard is restored to her, the rent reduction will cease.

As the tenant has been only partially successful in her claim, I find that she is entitled to recover $25.00, which is 25% of the filing fees paid to bring her applications.

Conclusion

The tenant is awarded $75.00 which represents $50.00 for loss of quiet enjoyment and $25.00 in recovery of filing fees. She may deduct this amount from a future rental payment. The tenant is also permitted to reduce her rent for each of the units by $10.00 per month. The balance of the claims are dismissed 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: February 17, 2012

Residential Tenancy Branch