Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDC, MNR, MNSD, OLC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Preliminary Matters:

The parties agreed that I should amend the Application for Dispute Resolution to replace JD with AWRS. As a result I ordered the style of cause be so amended. Further, the parties agreed that I should consider the contents of the letter from the tenant to the landlord dated March 12, 2014 as part of the Details of Dispute.

Both parties had submitted significant documentary material. The documents had not reached the file. As a result I ordered the within application be adjourned.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. The Registry schedules a certain period of time for the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord provided a written submission which was considered as part of her oral submission at the end of the hearing. All materials including the written submission of the landlord has been carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 28, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is to an order permitting the access of a guest?

b. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

c. Whether the tenant is entitled to a monetary order and if so how much for the reduced value of the tenancy caused by:

- Continued harassment
- Breach of the covenant of quiet enjoyment caused by continued construction the floor immediately above the tenant
- Lack of sufficient heat much?

Background and Evidence

The parties entered into a written tenancy agreement dated July 17, 2012 that provided for a month to month tenancy. The tenancy agreement provided that the tenant(s) would pay a subsidized rent of $375 per month payable on the first day of each month. The tenant(s) paid a security deposit of $575 prior to the start of tenancy.

The tenant qualified for housing and resides on the 6th floor of a rental property located in the downtown eastside. It is a single occupancy rental unit and part of Bridge Housing for Women. The landlord directly manages the residential housing property.

The mission statement of the landlord is as follows:

> "Atira Women's Resources Society is a community-based organization that supports all women and their children, who are experiencing the impact of violence committed against them and/or their children. Through education, advocacy and outreach, Atira is an active voice in the struggle to end violence against women and their children. Our feminist-based philosophy informs all our work with ourselves, each other and the community.

The rental property opened in June 2001. It is a social housing development comprised of 36 units of support, indefinite-term housing and 12 rooms of short-term transitional housing, with all tenants being women. The rents are subsidized by the British Columbia Housing Management Commission.

On or about October of 2013 construction began on the 7th floor of the rental property which allowed for eight additional bedrooms to house women living in the complex with serious heath concerns. The parties expect the work will be fully completed soon with a completion date of June 2014. The landlord testified they have undertaken significant consultation with the residents prior to and during the construction process.

The parties have been involved in an ongoing dispute that has continued for several months. The tenant's friend PR has acted as an advocate on her behalf and assisted her in dealing with the landlord.

On February 20, 2014 the tenant wrote the landlord a letter setting out a number of complaints relating to problems with the unit including noise problems with construction on the 7th floor immediately above her. The landlord responded to these concerns in a letter dated February 25, 2014.

In a letter dated February 26, 2014 the landlord wrote to the tenant advising the tenant that she was not permitted to have her guest PR stay overnight in her apartment under any circumstances and each time that P come to the rental property he must show identification and leave with staff each time he comes and goes from visiting her.

On February 27, 2014 the landlord wrote the tenant a letter that stated it was barring PR from the rental property and advising that the police would be called to have him removed if came. The tenant received a letter dated February 26, 2014 from the landlord. The tenant presented evidence that PR attended the residential unit and the police were called.

The representative of the tenant stated that he was told by the police that the landlord was given a period of time to provide evidence as to why PR should be barred. The landlord failed to provide corroborating evidence and the police advised him that they (the police) would not intervene if called again about PR visits. The landlord did not provide evidence to dispute this.

The tenant presented a set of notes of how the landlord has disturbed her tenancy on a day to day basis including the following:

- January 21 entered without notice to turn off water

- 24 hour policy checking on the well being of residents (requested no calls before 9:00 a.m.
- January 23, 24, 29, Feb 5, 11, 12, 14, 17, 18, 20, 21 construction noises
- No heat on Feb 19, 20, 22, 23, 25
- The notes record a number of telephone calls to the landlord complaining about the heat
- The notes record a number of times the landlord has contacted the tenant under their 24 hour policy.

Landlord's Witness #1 is the program director for the landlord. Briefly her evidence is as follows:

- She has worked for the landlord for 10 years.
- The rental property has 36 fully contained rental units. The tenant lives in one of those rental units.
- In October 2013 the landlord commenced work on the 7th floor in order to convert it to 8 additional units.
- The residents were advised of the construction in July 2013. Notices were distributed. The residents were advised of the disruptions that might occur on a regular basis either through notices or meetings. The tenant failed to attend any of the meetings.
- Every effort was made to minimize construction noises/
- One of the residents of the 6th floor whose unit was profoundly affected by the construction was moved to another housing property.
- On one occasion when there was a leak the landlord gained access on an emergency basis.
- The landlord attempted to minimized the disruptions to residents by giving them trips to the casino and lunch cards during the times when construction disruptions was most significant.
- The eight rooms that are being constructed have a significant utility as it will house women with complex medical histories.
- The feedback the landlord has received from other residents is a pride in what is being constructed.

- The landlord has responded appropriately when given notice by the notice of maintenance problems. In the tenants case they have given her longer than 24 hours notice.
- The landlord has experienced problems in trying to determine the cause of the lack of heat in the tenant's rental unit.
- The tenant's guest PR is a large frame individual who appears to be constantly angry. It is loud, threatening and demeaning to the staff.
- On one occasion another resident questioned him on gaining access through the use of scan card. That resident reported to the landlord that PR verbally abused her and was extremely aggressive.
- The resident referred to above did not testify at the hearing nor did she provide affidavit material or evidence of any sort.
- She testified women feel unsafe when PR is around.
- On two occasions PR has used the tenant's scan card to get access to the 7th floor construction area.

Briefly the evidence of landlord's Witness #2 is as follows:

- She is a support worker employed by the landlord.
- PR is aggressive, angry and demeaning to staff members. He has verbally abused them and sworn at them.
- The landlord has a policy that they check to ensure the tenant is safe every 24 hours. The check is something as simple as waving to landlord when they leave or come into the rental property. If the landlord has not seen a resident in 24 hours they telephone the resident the next shift or leave a note under their door requesting that the tenant contact them. The landlord and the tenant have reached an agreement where they have changed this 24 hours contact policy to 5 days for the tenant.

The tenant gave evidence that on 5 occasions workers did not come when they were scheduled to come. Also three different people have walked in on the tenant. She testified that PR is the only guest that she has had.

Analysis - Whether the tenant is entitled to an Order permitting the access of a guest?

Section 30 of the Residential Tenancy Act provides as follows:

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

Section 9 of the standard terms that are incorporated into all tenancy agreements by virtue of section 13 of the Residential Tenancy Act Regulations provides as follows:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*

The landlord's submission with respect to the barring of the tenant's guest is set out in paragraphs 33 to 37 of their submissions and includes:

- The landlord promotes a community based approach with respect to procedures regarding guests. Monthly meetings are held where tenant input is sought and obtained regarding various matters including expectations for the behaviour of all guests.
- When a guest of a tenant engages in significantly disruptive, unreasonably disturbing or threatening behaviour with the tenant herself, other tenants, the staff or other third parties the landlord will consider restricting aces for that individual where it is reasonable to do so.
- The tenant's guest PR had been significantly disruptive to other tenants and has been rude and threatening to the staff of the landlord.

I have carefully considered all of the submissions of the landlord and the special circumstances the landlord finds itself in housing women who are victims of violence. The Residential Tenancy Act gives the tenant a right to have guests when it provides that the landlord must not stop the tenant from having guests under reasonable circumstances. PR is the tenant's only

guest. After carefully considering all of the evidence and the submission of the parties I determined the landlord has failed to establish sufficient basis to deny access to the tenant's guest PR in the manner in which they did. In my view the requirement of "reasonable circumstances" on the facts of this case imposes an obligation on the landlord to act reasonably including an obligation to give sufficient notice to the tenant of alleged misconduct so that she can deal with any misconduct of her guest. In the letter dated February 26, 2014 the landlord purports to limit access of PR. One day later the landlord gives the tenant a letter indicating that the guest is barred. The letter does not provide reasons. It does not give the tenant an opportunity to rectify the situation.

Further, the evidence provided by the landlord to support the decision to bar the guest is not sufficient. The landlord presented hearsay evidence from another resident. While hearsay evidence is permitted in a Residential Tenancy Act hearing care must be taken in considering the weight to give to it. The other resident did not testify or provide affidavit or other evidence of any sort. The tenant's guest denied the allegations. In my view the landlord has failed to present sufficient evidence to justify the decision to bar PR amounted to "reasonable circumstances" as required by the Act.

As a result I determined that the decision of the landlord to bar the tenant's guest is in breach of the standard residential tenancy agreement and the Residential Tenancy Act and I ordered the landlord to comply with the tenancy agreement and the Residential Tenancy Act. .

This determination should not be interpreted as giving a guest a licence to engage in misconduct. The right of the tenant to have guest is not unlimited. Rather it is limited to "reasonable circumstances." Where the conduct of a guest amounts to a significant interference or an unreasonable disturbance the landlord can serve a one month Notice to End Tenancy based on that misconduct. Further, in my view the landlord can bar a guest where the landlord can establish a reasonable basis based on sufficient evidence a landlord can bar a guest but they must give the tenant sufficient notice to respond to the allegations.

<u>Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit:</u>

I determined the tenant has failed to establish a sufficient basis for an order suspending or setting conditions on the landlord's right to enter the rental unit. Section 29 of the Residential Tenancy Act provides as follows:

Landlord's right to enter rental unit restricted

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).

Section 70 of the Residential Tenancy Act provides as follows:

Director's orders: landlord's right to enter rental unit

70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 *[landlord's right to enter rental unit restricted]*.

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

(a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and

(b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

I determined the tenant has failed to present sufficient evidence to provide a basis for an order restricting the right of access of the landlord. The landlord has a right to enter the rental unit without permission where an emergency exists. I am satisfied that the actions of the landlord to do warrant such an order.

Tenant's Application for a monetary order:

The tenant seeks a monetary order in the sum of $10,000 for breach of the covenant of quiet enjoyment. Section 28 of the Residential Tenancy Act provides as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
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> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (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]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference

Policy Guideline #6 provides as follows:

> "Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
>
> It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, h**owever a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.
>
> Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.
>
> A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.
>
> A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to

> treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy."

Policy Guideline #16 includes the following statement:

> Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

The written submission of the landlord relies on the case of Evergreen Building Ltd. v. IBI Leaseholds Ltd., 2009 BCSC 235 which dealt with the issue of quiet enjoyment in the context of a commercial tenancy as follows:

> "A breach of the covenant of quiet enjoyment requires proof of an interference with the use and enjoyment of the leased premises which is a 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."

Analysis

I do not accept the submission of the tenant that the 24 hour contact policy employed by the landlord amounts to harassment and the breach of the covenant of quiet enjoyment. The tenant is not entitled to compensation from the landlord for their efforts to ensure that she is safe. The tenant could have avoided any difficulties she might have encountered through this policy through a brief phone call to the landlord. I applaud the parties for their agreement to vary that policy to 5 days as it appears to meet the interests of both parties.

All of the evidence has been carefully considered. The landlord's written submission was considered as part of her oral submission made at the end of the hearing. I determined the landlord has breached the covenant of quiet enjoyment and the tenant is entitled to compensation based on the following reasons:

- The parties acknowledge that construction commenced on the 7th floor (which is located above the tenant) in October and will end in June.

- The tenant provided a log of entries that indicate the construction disturbed her enjoyment of the rental unit on a regular basis for January and February. The Application for Dispute Resolution was filed on February 28, 2014. I determined the disruption was significant and substantial.
- I determined there has been a significant problem with the heat in the tenant's rental unit and the landlord has been unable to properly fix it for several months.
- I do not accept the submission of the landlord that the tenant has failed to prove that her enjoyment of the rental property has been significantly reduced. The evidence of the tenant including her daily logs is sufficient evidence.
- Policy Guideline #6 provides that a tenant is entitled to reimbursement where the tenant has lost a portion of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations. I determined the same principle applies where the tenant enjoyment of the property has been significantly reduced because of construction noises even where the landlord has made every effort to reduce the disruption.
- I accept the evidence of the landlord that they have done all that can be reasonably expected to reduce the disruption caused by the construction. However, this does not eliminate the tenant's right to compensation for breach of the covenant of quiet enjoyment where the disruptions have been as significant as in this case.
- I do not accept the submission of the landlord that the tenant has failed to mitigate her loss by failing to attend the meetings. The construction would have occurred whether or not the tenant attended the meetings.
- Similarly I do not accept the submission of the landlord that the tenant is not entitled to compensation because other residents on the 6th floor have not complained or that they have taken vouchers to attend the casino or lunches. Similarly, the fact that the construction will be for the greater good of all tenants does not prevent the tenant from bringing such an action.

In summary I determined that the lack of heat and the disruption caused by the construction on the 7th floor caused a substantial interference in the enjoyment of the rental unit. It is difficult to assess the reduced value of the tenancy in a situation such as this. The tenant's claim of $10,000 is totally unreasonable and not supported by the evidence. The tenant failed to present evidence of special damages. However, I have considered the construction has lasted

from October 2013 to June 2014. The construction noises have been substantial although they have been significantly reduced by the time of the hearing. The rent is $375. The landlord minimized the disruptions as most of the noises occurred during the middle of the day. There was no or very little disruption from 4:00 p.m. to 9:00 a.m. the next morning. In the circumstances I determined the tenant is entitled to $600 for the breach of the covenant of quiet enjoyment.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of $600 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: May 20, 2014

Residential Tenancy Branch