



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, LRE, AAT, RR, FF

Introduction

This hearing dealt with an application by the tenant. Both parties participated in the conference call hearing. The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged argument with each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

The tenant became very angry with me when I repeatedly asked her to stop interrupting the landlord when she was giving testimony. The tenant alleged that the landlord was not being truthful and felt she shouldn't be heard, even though the tenant had 40 minutes of uninterrupted time to present her claim during the 60 minute hearing. I explained the hearing process numerous times to both parties and how each party has a right to provide their position, make submissions, challenge any and all evidence and make final arguments but in a respectful and orderly fashion; eventually the parties abided.

I will outline what the tenant has applied for below.

Preliminary Issue # 1

Some of the issues that the tenant has applied for are to have the landlord comply with the Act, regulation or tenancy agreement, suspend or set conditions on the landlords' right to enter the unit, site or property and allow access to the unit or site for the tenant or the tenants guests. The tenant stated that "I only applied for these in case the landlord tried to evict me". As there is no notice to end tenancy before me, these items are hereby dismissed.

The remainder of the tenants' application are the items that are addressed in this decision, they are; the tenant is seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, make repairs to the unit, site or property, allow the tenant to reduce rent for repairs, services

or facilities agreed upon by not provided and to recover the filing fee for this hearing. The hearing proceeded and completed on this basis.

Preliminary Issue #2

The tenant stated that she received the landlords' documentary evidence three days before the hearing. The tenant stated that the submission was late and should not be considered when making a decision. I asked the tenant if she required more time to review the evidence or required an adjournment to respond, the tenant advised that she did not. I have reviewed the landlords 19 page submission and find that the majority of the pages are of e-mails between the landlord and the subject tenant. Rule of Procedure 3.17 addresses this issue before me as follows:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties must have the opportunity to be heard on the question of accepting late evidence. If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence.

The tenant agreed that she had ample opportunity to review the evidence and was not prejudiced by having this evidence included but felt that it since it was late it should be excluded. I am satisfied that the tenant is not prejudiced by having this evidence included in the hearing and will be considered when making a decision.

The landlord had no issue with being served the tenants evidence and it also will be considered when making the decision.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenant gave the following testimony:

The tenancy began on or about October 1, 2008. Rent in the amount of \$800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00. The tenant stated that she is asking for \$6072.00 for loss of quiet enjoyment, the recovery of her registered mail fees for this hearing and to have repairs conducted on; the refrigerator, the outside lighting of the building, the common access door to the building and to have the soundproofing and installation re-installed on the unit below hers.

The tenant stated that she occupies the sole rental unit above three commercial businesses. The tenant stated that she has not had any issue with the previous businesses. The tenant stated that when the tattoo shop took possession of the unit below hers in early 2014, the problems began. The tenant stated that the owner of the shop conducted renovations that included the removal of the soundproof insulation. The tenant stated that she attempted to address this issue with the shop owner but to no avail. The tenant stated that she made numerous phone calls and sent several e-mails to the landlord about this issue. The tenant stated that the noise that comes from the tattoo shop has been ongoing and since February 2014. The tenant stated that it has affected her health in a negative way and that she seeks compensation for having this ongoing disruption in her life.

The tenant stated that despite her efforts, the landlord has done nothing. The tenant stated that she feels that the landlord and the tattoo shop owner are in collusion with one another and are intent on trying to get her to move. The tenant stated that the landlords' inaction is a form of harassment and is part of the \$6072.00 that she is asking for. Along with the monetary request, the tenant seeks an order to have the soundproof insulation re-installed.

The tenant stated that the lighting around the building needs to be looked at. The tenant stated that she believes that some bulbs need to be replaced. The tenant stated that her refrigerator is "clunking". The tenant stated that the landlord sent a handyman on one occasion but was unable to repair it. The tenant also asks that the common access door be reinforced with steel plates around the locks. The tenant stated that over time the "gap" in the door and the frame has gotten larger and is concerned it may be an easy entry point to get into the building and then up to her unit on the second floor.

The landlord gave the following testimony. The landlord stated that she adamantly disputes the noise complaints of the tenant. The landlord stated that the tenant has contacted the police on one occasion and the bylaw enforcement officers on numerous occasions. The landlord stated that each time she has called the authorities they have deemed that the tattoo shop is not causing a disturbance or in contravention of any of

the bylaws. The landlord stated that the owner of the tattoo shop feels that he is the one that is being harassed by the subject tenant and that he has gone above and beyond in trying to accommodate the subject tenant.

The landlord stated that she has sent numerous e-mails to the both the subject tenant and the owner of the tattoo shop in attempts to resolve the problem. The landlord stated that this issue was resolved in May of 2014 but the tenant has brought it up again due to a request to have the tenant move out. The landlord stated that there is no basis to the tenants' complaints and that she is the one causing a disturbance.

The landlord stated that the soundproof insulation is still intact and that the tenant does not have any proof that it was removed. The landlord stated that the tenant lacked proof for much of her claim. The landlord stated that if the tenant needs something repaired she always arranges for a "handyman" to come and do that. The landlord stated she has no problem sending someone to look at the lights, the lock and the refrigerator.

Analysis

I address the tenants' application and my findings as follows.

Tenants Claim for Compensation for loss of Quiet Enjoyment \$6072.00

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant, in this case the tenant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has failed to satisfy all four grounds as required when seeking a monetary order under Section 67 of the Act, specifically #1, #2, and #3. The tenant has not provided any corroborating evidence for the noise issue, or that the landlord was negligent or reckless, or proof of the actual amount to compensate. Based on the disputing evidence of the landlord, the insufficient evidence submitted to me by the

tenant and on a balance of probabilities I dismiss the tenants claim for \$6072.00 as compensation for loss of quiet enjoyment.

Tenant's Request to have soundproof insulation re-installed

As the tenant did not provide sufficient evidence that the sound proof insulation was removed and that the landlord disputes that it has, I must dismiss the tenants request to have it re-installed.

Tenants Claim for Registered Mail Fees

The tenant has also applied for the recovery of the \$84.06 for registered mail costs incurred. The Act does not provide the jurisdiction for an arbitrator to reimburse a party for the costs of litigating ones claim and I therefore dismiss this portion of the tenants' application.

Tenants Claim for Repair Order and Rent Reduction

The tenant seeks repairs order for the outside lighting of the building, the refrigerator and the common access door to the building. The landlord stated she was happy to abide by a work order from the Branch and address the tenants' concerns. Based on the landlords' willingness to address the items and that none of the repairs fall under an "emergency repair", the landlord is being given a generous time frame to ensure repairs are conducted, I make the following orders.

Refrigerator - I hereby order that an appliance repair technician inspect, assess and repair what is required for the tenants' fridge by no later than December 31, 2015.

Outdoor Lighting – I hereby order the landlord to inspect, assess and repair what is required for the two exterior light fixtures of the building by no later than December 31, 2015.

Common Access Door – I hereby order that the landlord is to inspect, assess, and repair what is required for the common access door and to ensure that it is fully functional and provides sufficient safety by no later than December 31, 2015.

If the landlord does not conduct the necessary repairs by December 31, 2015 the tenant is entitled to reduce their rent by \$50.00 for each subsequent month until those repairs are completed.

As the tenant has only been partially successful in her application I decline to award her the recovery of the filing fee and she must bear that cost.

Conclusion

The landlord is ordered to conduct the necessary repairs as outlined above. If the landlord does not conduct the necessary repairs by December 31, 2015 the tenant is entitled to reduce their rent by \$50.00 per month commencing January 1, 2016, until those repairs are completed.

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 12, 2015

Residential Tenancy Branch

