Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2013 for a fixed term tenancy of a year with the option of continuing as a month to month tenancy. The tenancy ended on May 31, 2014. Rent for this basement unit was $750.00 per month due on the first of each month.

The tenant testified that she waited for two years since the end of her tenancy to file her application as she had some serious health issues. The tenant testified that she did file her application on the last allowable day of May 31, 2016.

The tenant testified that she seeks to recover all the rent paid during her 13 month tenancy to an amount of $9,750.00 for the loss of quiet enjoyment of her rental unit. The tenant testified that the following events occurred during her tenancy:

The landlords entered the basement suite 46 times during the tenancy. On one occasion the landlords had scheduled a time to enter the unit but moved it three days forward. The tenant was home sick in bed and the landlord needed to get in to the unit with the furnace man because the furnace is located in the tenant's unit. The landlord's email had informed the tenant that they would enter the unit whether or not the tenant was at home. The tenant felt she had to get up to let them into her unit. The tenant testified that she did not always receive written notice of entry and only a few emails advising the tenant that the landlords wanted to enter her unit were provided. The tenant does however agree that she did give the landlords permission to enter her unit each time.

When the unit was advertised the advert stated that the patio outside the unit was for the tenant's use. The landlords also confirmed this to the tenant verbally. The tenant agreed that it is not stated in the tenancy agreement as for her sole use and stated that she no longer has a copy of the original advertisement for the unit. The tenant put pot plants on the patio, some items of furniture and some other stored items when she first moved in. The tenant also had items stored in her unit which she was slowly unpacking and sorting. On June 02, 2013 the landlord gave the tenant a letter stating that she must remove her stored items from the patio and must make her unit a usable space.
The tenant did comply with this letter, she sold her futon located on the patio and only had her plant pots and a bookcase located there. On June 27, 2013 the landlords came and inspected the patio and again wrote and said the tenant must remove stored items. On July 30, 2013 the tenant received another letter from the landlords saying stored items inside the unit must be removed. The landlords gave a deadline of August 29, 2013.

On August 26, 2013 the landlords threatened the tenant by saying that the landlord's dad and his wife need a place to live by December 15, 2013. In that letter the landlord (SO) also spoke of the stored items in the tenant's unit and making her unit free of clutter for fire hazard reasons. The letter also stated that the tenant should not simply but her belongings in her jeep and requested that the tenant get a storage locker or the landlords will be forced to give the tenant a

notice to move as of October 01, 2013. The tenant had cleared the stored items in her unit and these were only in her jeep so they could be taken to storage.

Further letters were sent to the tenant concerning the tenant having a heater on in the unit and plugging it directly into an outlet or an adaptor with a circuit breaker, asking for entry to service the furnace in early November and to do further unit inspections. Text messages were also sent to the tenant concerning the tenant cooking late at night and the transference of food smells into the landlords' unit and doing dishes late at night. The tenant wrote back to the landlord confirming that she has only cooked food twice after 9.00 p.m. and tries to wash dishes before 10.00 p.m. Letters were given to the tenant about the hydro bill doubling and these asked the tenant to conserve energy and to do large loads of laundry instead of smaller loads. At the start of the tenancy the landlord gave the tenant two time slots a week for laundry and often the landlords did laundry on the same days as the tenant's time slot.

The landlords continually made accusations of cooking; running water; not turning lights off; and removal of the tenant's belongings and the tenant's view is that this was harassment. Everything the tenant did seemed to affect the landlords. The tenant got to the point where she did not shower; wash her face; or even flush the toilet at night in case it affected the landlords. On one occasion the tenant was sitting on the front step eating a salad in the sun when the landlord drove up and complained.

Towards the end of the fixed term lease the landlords wanted the tenant to sign a new five month term but the tenant refused as the tenancy agreement allowed that the tenancy could continue as a month to month tenancy. When the tenant refused the landlords became angry towards her and then the issues started to escalate. The landlords threated to dispose of the tenant's plants and said the patio was actually a common area. The landlords started to put chairs on the patio and as the tenant thought the landlords had left them for her and she did not want them, she removed them back onto the landlords' deck. The landlords then informed the tenant that they used the patio to store items in the winter. The landlord screamed at the tenant saying she was not allowed to use any other space on the property except her unit. In March 09, 2014 the landlords took away the tenant's use of the patio.

When the tenant signed the lease the landlords said they wanted another $25.00 a month towards hydro; yet the lease states hydro is included in the rent. The landlords then said they would revisit this in three months. The tenant agreed she never paid anything extra for hydro.

In the spring of 2014 the landlords came down and were pounding on the tenant's door and window telling her to come out and deal with them. The tenant was doing laundry at the time and the landlords entered the common laundry area. The landlord (TO) pushed a paper at the tenant screaming at her to sign it. The tenant refused as she had not read the paper. The landlords then throw it in the tenant's door. The paper and pen touched the tenant and the tenant believes that this was an assault on her by the landlords.

The landlords started to do monthly inspections of the unit. They complained about the tenant's garbage smelling and she had to take her garbage bin out to the street herself. There was a slight drip under the kitchen sink. The tenant informed the landlord of this and was told the plumber was away for two weeks. This was not an emergency repair yet the landlords said they were entering her unit to fix this emergency leak. The tenant was so shaken by the landlords' behaviour that she called the police. The police spoke to the landlords and the landlords told the police it was the tenant being antagonistic.

The tenant asked that everything be put in writing as the internet she was supposed to have was not always working and she did not always get emails. The landlords had said the router was working but it only worked on and off until the tenant refused to sign the five month lease and then it was turned off sporadically.

The tenant was very cold in the unit. She asked the landlords for a heater and was told the thermostat was set upstairs. The tenant referred to her photographic evidence which the tenant testified showed the temperature in her unit being only 10, 12 and 14 degrees. The tenant testified she suffered from a lack of heat from October, 2013 to March 2014. The bathroom was the coldest room at 10 degrees. The tenant had to wear a jacket, scarf and shoes in her unit and the landlords were notified multiple times. The landlords said they had not changed the temperature yet the landlords did turn it down when they went to work. In the landlords' unit upstairs it was 17 degrees at night and in the day 18 degrees. The landlords said when they come home it is set for 22 degrees but the tenant testified her unit never got over 14 degrees as

it is in the basement. With a heater on the unit would reach 17 degrees if the furnace was on all day.

The tenant could not vacate her unit as she had a lease even though she wanted to because the neighbours and the landlords' guests smoked and the tenant has an allergy to smoke. The landlords had assured the tenant that their neighbours did not smoke before she signed the lease. This is the main reason the tenant moved out.
The tenant witness DR is the sister of the tenant. The witness testified that she knows the tenant did not have internet as she sent emails to the tenant which she did not get. The witness also testified that she knows the tenant's unit was very cold as she experienced this when she visited the tenant. On one occasion she spoke to the tenant and was informed the tenant was hungry. When the witness told her to cook something the tenant said she was not allowed to cook after 9.00 p.m. The witness testified that on one occasion she had gone to pick the tenant up from the unit and the tenant was sending an email to the landlord about someone coming to fix a pipe. When the tenant was at her doctor's appointment she missed a call from the plumber so the tenant had to call him back and fix up an appointment to meet him.

The landlords asked the witness why she waited until October 22, 2016 to write her letter concerning these issues. The witness responded that she wrote the letter when the tenant was dealing with this and when the tenant wanted to submit her statement in evidence. The landlord asked the witness if she did not feel that she should have written in when the tenant left the unit. The witness responded no. The landlords asked the witness what date was it that the plumber was involved. The witness responded that she does not remember.

The landlords testified that the tenant waited until the last day to file her application and this has disadvantaged the landlords as they no longer have all the records of the tenancy due to the time frame. Their recall of certain events may also be limited after this time. The landlords raised the issue of the tenant's documentary evidence and were concerned that the tenant filed her application in May 2016 yet delayed sending her evidence until 14 days before the hearing.

The landlords provided the following testimony in rebuttal of the tenant's testimony and documentary evidence. They testified that the tenant had a lot of issues with cigarette smoke from the landlords' neighbours that smoked. The tenant spoke to everyone about this and it was

embarrassing for the landlords. The landlords sealed the tenant's door jams to prevent smoke coming into the unit. The landlords testified that the leak under the sink was addressed by the landlords. The tenant was given notice to enter her unit and the tenant always gave the landlords permission to enter.

With regard to the tenant's heating issues; these were all addressed by the landlords. In November 2013 the landlords had the furnace serviced and in December it clicked off and the landlords had to enter to relight the pilot light. In January, 2014 the landlords attempted to replace the furnace as its issues were not resolved. The landlords needed to get quotes for this but the tenant got annoyed when the landlords had to enter her unit as the furnace was located there. The tenant did ask for a heater in February, 2014 and the landlords provided one. The unit was always warm when the landlords went in. The landlord's testified that this unit is only 600 square feet and the landlords also have living space in the basement which was not cold. When the tenant sent the landlords her temperature readings the landlords asked for access to measure the temperature in the tenant's unit as the photographs of her readings were not dated; however, the tenant denied the landlords access to do this. The landlords referred to the utility bills showing how high the bills were to proof they did not deny the tenant heat.

The landlords agreed that there were a few times when it was colder outside and the landlords' unit became cooler so they called the tenant to say they would turn the heat up but the tenant did not respond as she was warm in her unit with her heaters.

The landlords testified that the advert for the unit did not say the unit came with a patio exclusively for the unit and the tenant was never told this patio was for her sole use. The patio was always a common area. When the tenant moved into this small unit she moved in with an entire storage unit of belongings. She filled the patio with her belongings and these were not fully cleared for five months. The landlords agreed they did write and ask the tenant to remove her belongings. Inside the unit it was stacked with boxes. The tenant could not access any outlets and had extension cords plugged into extension cords. Due to this excessive storage the landlords had concerns about fire safety. The landlord spoke to the fire department seeking advice on this issue. The tenant was asked to remove her excessive belongings and was advised that monthly inspections would take place.

The tenant's plants did not become an issue straight away. This did not arise until the tenant started to put her plants on the landlords' lawn and anywhere they could get sun. After this the tenant was asked to remove her plants. There were a few occasions the tenant cooked food late at night and was informed that these food smells were coming up through the vents. The landlords asked the tenant to just be considerate after 9.00 p.m. and considerate about using water after 10.00 p.m. There were no rules about these issues it was just a question of common consideration.

The landlords agreed that there was an occasion where the tenant called the police. The police did not want to get involved. This was when the tenant denied the landlords' access to fix the leak in her unit. The police informed the landlord that the tenant had accused them of harassing her. The police recommended to the tenant that if she was not happy she should move out and that they did not want to be called again. The police told the landlords that the tenant was being antagonistic.

The landlord testified that it was the tenant who invaded their space. She kept knocking on the landlords' door wanting to speak about her issues. The landlords disputed that they asked the tenant to sign a five month lease the landlords were going away and the tenant was looking for somewhere else to live so they asked the tenant to let them know if she was staying.

The landlords disputed that they assaulted the tenant in any way. The paper they asked the tenant to sign was just authorisation to enter to fix the leak. The landlord disputed that there were continual issues with the internet. The tenant kept saying she did not have access. The internet was only down once when the landlords had the system upgraded and it was down for about an hour. On two other occasions it went down when the power went off. These issues were not within the landlords' control and it was always reset when the landlords arrived home.

The landlord SO testified that when her father was having some problem he asked if he could come and stay. The tenant told her father it was a possibility but was not sure. Notice was never given to the tenant to evict her.

The tenant asked the landlord SO if she sent the letters stating if the tenant does not sign a five month lease she will move her dad and his wife in. SO responded that at that time she did not

understand and was wrong; she called the RTB and was informed the lease went month to month after the fixed term. The tenant asked SO about her photographs about the tenant's stuff on the patio allegedly in October 2013. The tenant states that the photographs show flowers in bloom and asked SO if the photographs were taken in May and not October as the flowers bloom in May. The tenant stated that the photographs do not show stored belongings on the patio. SO responded that the photographs do not show the tenant's stored belongings well, but that they were taken in October and SO has no idea when the flowers are in bloom.

The tenant asked SO why she said she had provided the tenant with a heater in February when she did not. SO responded that a heater was provided at the end of February and the tenant's vents were also opened at that time as the tenant had closed them. The tenant asked why the landlord stated "many heaters" when the tenant only had one. SO responded that the tenant had one oil filled heater, one other heater and one heater provided by the landlords when the tenant's heater broke. The tenant asked SO why is SO denying that the tenant was not allowed to cook after 9.00 p.m. or run water. SO responded that the letters were sent asking the tenant to be considerate and that the landlords would show her the same respect. The tenant asked SO why she said the tenant was running multiple extension leads when the tenant only used one power bar. SO responded that the photograph shows stuff in unit after the tenant left but that the unit did not look like that during the tenancy.
The tenant agreed that she had a power bar plugged into an outlet and an extension cord running from the power bar to the lamp.

Analysis

With regard to the tenant's application concerning a loss of quiet enjoyment of the rental unit for which compensation of $9,750.00 is sought; I refer the parties to s. 28 of the *Act* which states:

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(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.*

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: A landlord must ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This may also include situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I find it is important to note here that while I find there was some inconsistent testimony from the landlords regarding their request that the tenant sign a five year lease. I find this is likely to be as a result of the tenant's failure to file her application in a timely manner or until exactly two years after the tenancy ended when the landlords thought the matter was behind them. I accept this delay in filing an application has put the landlords at a disadvantage as it was difficult for the landlords to recall every aspect of the tenancy. I find this has prejudiced the landlords and their ability to provide clear and accurate testimony.

While I find the landlord has entered the tenant's unit on many occasions, I am satisfied that each of these occasions was either for the purpose of carrying out monthly inspection, as is the landlords' right to do so under the *Act* and the tenancy agreement, and to undertake maintenance work in the unit. The tenant agreed that each time the landlords entered the unit the tenant gave permission for entry and therefore I cannot deem that the landlords have breached a material term of the tenancy agreement or that the landlords entered the unit without

the tenant's express permission. If 24 hours written Notice was not given then the tenant would have had the right to refuse entry to the landlords for anything other than an emergency repair.

I accept that the relationship between the parties was acrimonious from almost the outset of the tenancy but the tenant must bear some responsibility for this break down in the relationship which warranted a number of letters being sent to the tenant to ensure her rental unit was not creating a fire hazard by the excessive storage of the tenant's belongings either inside or outside on the patio. I am not satisfied that the tone of the landlords' letters and or emails could be construed as harassment, While some letters have been provided in evidence by the tenant I find the wording shows the landlords' frustration with the tenant and their hope to reach a respectful tenancy regarding some of the issues raised. Further to this, the tenant has insufficient evidence to show that the patio formed part of her tenancy agreement as there is no mention of this being an exclusive space for the tenant's use. Therefore, the landlords are within their right to restrict what the tenant can put on the patio if this is a common area.

The tenant raised issues of harassment concerning the landlords' threats to remove her belongings or to evict the tenant. In any successful tenancy parties should communicate issues between them to find respectful solutions for both parties. If a landlord resorts to threatening eviction then if a tenant was to receive an eviction Notice the tenant is at liberty to file an application to dispute that Notice. This is not considered to be harassment.

With regard to the tenant's claim that the unit was cold; I find I am satisfied with the evidence before me and on a balance of probabilities I find it is highly likely the tenant's unit was colder than the landlords' unit. If a thermostat is located in the upper unit and controls the heat for both units then as is often the case the basement is the colder unit due to its location in the house. While I accept the tenant could have used heaters to keep her unit warm, if heat is included in the tenancy agreement as in this case it clearly was then the landlords must do everything to ensure the tenant has adequate heat. I find therefore for the months from October, 2013 to March, 2014 the heat in the tenants unit was not adequate and therefore I find the tenant is entitled to some compensation to an amount of $50.00 per month for six months to a total amount of **$300.00**.

With regard to the tenant's claim that her laundry usage was restricted by the landlords; the tenant was allowed to do her laundry between 10.00 am. and 4.00 p.m. on a Wednesday and between Noon and 6.00 p.m. on a Sunday. The tenant has insufficient evidence to show that her days or times were restricted by the landlords. If the landlords asked the tenant to do larger loads to save money then this was a reasonable request and not a rule that was enforced.

With regard to the tenant's claim that the landlords assaulted her; there is insufficient evidence to support this allegation of assault and the landlords deny any assault took place. When it is one person's word against that of the other then the burden of proof falls to the person making the claim. In this case the tenant has no further corroborating evidence to support this claim and therefore the burden of proof has not been met.

The tenant testified that the landlords complained that her garbage smelt and requested that the tenant bag it in green bags and take the bin out to the kerb. A tenant is normally responsible for her own garbage and the tenant has insufficient evidence to meet the burden of proof that this action by the landlords was harassment.

With regard to the issues concerning the lack of internet service; the tenant again has the burden of proof to show she was not provided with internet as included in her rent. The landlords argued it only went off on three occasions all of which were out of their control. Without further corroborating evidence from the tenant to show she did not have this facility for extended periods or that it formed part of a campaign against her of harassment then this part of the tenant's claim must fail.

With regard to the tenant's issues concerning smoking; the tenants testified that she was informed that this was a non-smoking environment before she moved into the unit but the neighbours and the landlords' guests smoked which affected the tenant. The landlords have no control over the actions of their neighbours if those neighbours are smoking on their own property and smoke drifts onto the landlords' property. The tenant has insufficient evidence to show that either the landlords or their guests smoked to the point that it affected the tenant's allergies or health.

I find the tenant's overall claim has little merit and therefore the tenant must bear the cost of filing her own application.

Conclusion

I HEREBY FIND the tenant's monetary claim is limited to $300.00 for the lack of heat in her rental unit. A copy of the tenant's decision will be accompanied by a Monetary Order for **$300.00** pursuant to s. 67 of the *Act*. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The remainder of the tenant's application is 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: November 30, 2016

Residential Tenancy Branch