



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision pertains to the tenant's application for dispute resolution made on May 22, 2018, under section 58 (1) of the *Residential Tenancy Act* (the "Act").

The tenant sought the following claims of relief:

1. pursuant to section 67 of the Act, a monetary order for compensation for \$5,000.00 for loss of quiet and peaceful enjoyment during her tenancy, for harassment, for gross negligence and intentional aggravation, and for conspiracy;
2. a monetary order for punitive damages in the amount of \$5,000.00 for intentional tort, harassment, and mischief; and,
3. a monetary order in the amount of \$100.00 for recovery of the filing fee.

The tenant and the landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called one witness, her daughter, to the hearing.

The parties did not raise any issues in respect of the service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision. I further note that at the outset of the hearing and pursuant to Rule 7.4 of the *Rules of Procedure* under the Act, I provided direction to both parties that should they want me to consider any documentary evidence in my decision, that they must present that documentary evidence to me during the hearing.

Preliminary Issue: Claim for Punitive Damages

In reviewing the particulars of the application with the tenant, I noted that her second claim related to punitive damages. Under section 67 of the Act, and as per *Residential Tenancy Policy Guideline 16 Compensation for Damage or Loss*, (on page 2), any amount of compensation sought must not include any punitive element. As such, I advised the tenant that I would be unable to consider this aspect of her application. She understood, and testified that she found out after she filed her application that she would not be able to seek punitive damages under the Act. Accordingly, I dismiss that aspect of the claim without leave to reapply.

Issues to be Decided

1. Is the tenant entitled to a monetary order for compensation in the amount of \$5,000.00 for loss of quiet and peaceful enjoyment during her tenancy, for harassment, for gross negligence and intentional aggravation, and for conspiracy?
2. Is the tenant entitled to a monetary order in the amount of \$100.00 for recovery of the filing fee?

Background and Evidence

The tenant testified that she commenced her tenancy on September 1, 2017, and ended the tenancy on March 31, 2018. Monthly rent was \$1,600.00. The tenant did not pay a security or a pet damage deposit. She moved into the rental unit with her children.

When the tenant first arrived to view the rental unit, which was situated on a large, sprawling property (on which the landlord also ran a bed and breakfast), it appeared to be a nice place for her to reside. "There were happy horses, and we thought we'd be happy there," as well. The rent also seemed quite fair. That said, the tenant understood that the landlord was going through a rather difficult separation with her husband.

After a short while, the tenant and her eldest daughter, "became slowly involved in the landlord's [marital and personal] issues." The stress of this, along with the tenant's grieving over the death of her mother, was not what the tenant had bargained for. The situation between the parties deteriorated to the point that the landlord evicted the tenant at midnight on November 1, 2017.

(The tenant referred me to documentary evidence in which the reasons for the eviction

were referenced. The eviction was disputed between the parties in a subsequent arbitration hearing, which resulted in the notice being upheld.)

The tenant could not sleep because of her being ousted from the house, experienced stress from living in an ostracized environment, and the entire experience “became an absolute shit show.” In all, the tenant testified that there was a negative spiral effect. In addition, the tenant testified that her two daughters suffered emotional instability and depression from the negative environment of the place.

The tenant also endured having to deal with another tenant of the landlord, who I will refer to as E. The tenant E was engaged in various behaviours such as videotaping the tenant, locking doors that she should not have been locking, and tattle tailing, all of which lead to the tenant feeling humiliated and to a damaged reputation.

In summary, tenant submitted that she “did not get the value” for the rental unit that she was renting for, and that the landlord is liable for breach of contract. The tenant’s initial claim of \$10,000.00 (half of which comprised the claim for punitive damages) is based on the approximate amount of rent paid during the tenancy.

The tenant called a witness—her teenage daughter—to the hearing. The witness described an incident involving the parties and the witness, where she and the tenant went to the landlord’s door in an attempt to “try to create peace” between the parties. The landlord, according to the witness, was “dragging them into their marriage issues.” The landlord and her husband slammed the door, and were aggressive and rude. She testified that at one point, the landlord got in her face and that she (the witness) “was scared that [landlord] was going to hit [me].” The witness testified that because of all of the hostility between the parties, she lived throughout the winter with anxiety and depression.

The landlord testified that the tenant became entangled in the private life of her and her husband. And, over a very short period of time, a division formed, and the landlord was hurt and angry with the tenant’s behavior. The landlord felt attacked at times, and testified to an incident involving a what I would describe as a verbal fight between the tenant, the landlord, and the landlord’s husband, regarding the tenant’s ongoing involvement in the affairs of the landlord. The tenant testified that she told the tenant, “my marriage is not your business,” and that “what happens in this house is none of your business.”

Not long after the verbal altercation, the landlord and her husband attended counselling, during which the counsellor recommended that the landlord minimize contact with the tenant.

She further testified that she has never bothered the tenant, never bothered the tenant's friends or family, and never done anything that the tenant accuses her of doing.

At the close of the hearing, the tenant advised me that regardless of the outcome of this hearing that she would be taking this matter to the Supreme Court of British Columbia, that the time allotted to this hearing was insufficient for the purposes of hearing the extent of the underlying issues, and that an in-person hearing is what is required. I explained to her that she has the right to appeal any decision pursuant to the Act.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant seeks a monetary order for compensation for loss of quiet and peaceful enjoyment during her tenancy, for harassment, for gross negligence and intentional aggravation, and for conspiracy.

The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation. (See *Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss*). In determining whether compensation is due, I must determine whether:

1. a party to the tenancy agreement failed to comply with the Act, regulation, or tenancy agreement;
2. loss or damage resulted from their non-compliance;
3. the party who suffered the damage or loss can prove the amount or value of the damage or loss; and,
4. the party who suffered the damage or loss has acted reasonably in minimizing their damage or loss.

The tenant claims compensation for loss of quiet and peaceful enjoyment, for harassment, for gross negligence, for intentional aggravation, and for conspiracy. The tenant and her witness testified about one incident involving what clearly amounted to a very heated verbal altercation involving the parties, and others.

Section 28 of the Act states that

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.

Other than the one incident to which the tenant and her witness spoke, the date of which was never mentioned, the entirety of the tenant's testimony referred to generalities of behavior of other parties, and general description of the place where the rental unit was located as negative, if not toxic. Based on the testimony of the tenant and of the landlord, the parties became involved in the private matters of the landlord, much to the ongoing detriment of all parties.

The verbal altercation incident might give rise to an unreasonable disturbance, but for the fact that the tenant and her daughter were participants in that incident. The witness said that she and the tenant went to try to make peace with the landlord and her husband. Tenants are not obligated under the Act to "make peace" with their landlords.

The tenant testified that she felt that she was living in an ostracized environment. This is entirely consistent with the landlord's testimony that she did not want the tenant involved in her private life and marital issues. The landlord's written submissions note that "[tenant] has harassed me at my door many times, bringing others to engage in accusation from her household, knocking on my door multiple times when we are in session with counsellors, interrupting my guests which included my husband and grandson to suggest that I am mentally ill," and so forth.

The tenant did not provide any compelling evidence or make any submissions regarding

how, specifically, the landlord failed to comply with the Act, regulation, or tenancy agreement. The tenant did not refer me to, during the hearing, any documentary evidence that would allow me to find as a fact that the landlord breached either the Act, the regulations, or the tenancy agreement. No details or dates were provided regarding any incident that might give rise to a claim for harassment, for gross negligence, intentional aggravation, or for conspiracy.

While I have no doubt that the tenant did not get what she bargained for (or, rather, what she expected she was bargaining for) during her tenancy, I find that, based on the testimony of all parties and the witness, I do not find that the landlord breached the Act, regulation, or the tenancy agreement, or that she is otherwise liable for the claims as submitted by the tenant.

Taking into consideration all of the evidence presented before me in compliance with the *Rules of Procedure*, the testimony of the parties, the testimony of the witness, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for a monetary order for compensation in the amount of \$5,000.00 for loss of quiet and peaceful enjoyment during her tenancy, for harassment, for gross negligence and intentional aggravation, and for conspiracy.

Conclusion

I dismiss the tenant's application without leave to reapply.

I dismiss the tenant's claim for a monetary order for recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: July 30, 2018

Residential Tenancy Branch