Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, MNRT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- a monetary order for the return of the security deposit in the amount of $1,500.00;
- a monetary order for damage or compensation under the Act in the amount of $33,332.00;
- a monetary order for the cost of emergency repairs in the amount of $168.00; and
- to recover the $100.00 cost of their Application filing fee.

The Tenant, M.L., the Landlord, W.Y.Z., and an agent for the Landlord, T.X. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said she had received the Application and the documentary evidence from the Tenants and had reviewed it prior to the hearing. The Landlord did not submit any documentary evidence for the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

During the course of the hearing, I determined who was the Landlord and who was not between the Parties named in the Application. As it turned out, T.X. was identified as a landlord in the Application, however, the Landlord, W.Y.Z., advised me that T.X. is a friend of hers, and not a Landlord. Similarly, only W.Y.Z. is named as the Landlord in the tenancy agreement. Accordingly, I have amended the respondent's name in the Application, as such, pursuant to section 64(3)(c) and Rule 4.2.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or other documentary submissions to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy ran from October 15, 2018 to May 31, 2019, with a monthly rent of $3,000.00, plus $250.00 for utilities, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $3,000.00, and no pet damage deposit. The Parties agreed that the Landlord returned $1,500.00 of the security deposit to the Tenant, but still owes $1,500.00.

The Parties agreed that the tenancy ended on June 2, 2019 and that the Tenant provided her forwarding address in writing to the Landlord on October 4, 2019.

Return of the Security Deposit → $1,500.00

In their first claim for return of the security deposit, the Tenant said they already have an RTB Order for the return of the security deposit; however, she said the Landlord has not complied with this Order. In the hearing, I advised the Parties that the Tenant would have to take the Landlord to the Provincial Court (Small Claims) and have the RTB Order enforced as an Order of that Court. As such, I dismiss this claim from this proceeding, without leave to reapply.

Damage or Compensation Under the Act → *$33,332.00*

The Tenant said that this claim is for the loss of quiet enjoyment of the rental unit by the Landlord for the eight-month tenancy. The Tenant, M.L., said:

> All the time she stopped my quiet enjoyment. He [T.X.] came to the house each day. He used her key to get in. He doesn't phone me.
>
> [The Landlord] said last time that she doesn't have a property manager; she gave all the keys to [T.X.], who is coming in the house without notice. I also know that he left because when I left the house, I closed all the lights. But the washroom lights were on, the garbage bag was taken.
>
> Also, she has a friend coming there each Saturday, and I have to open the garage door for her. Her friends come in the backyard to grow vegetables. Even if she is not here, everyone comes in that place like it's her home. Why?
>
> Why I'm so angry about [T.X.]; he has a camera in the house. She can check up on me. This is really serious. I asked them to stop it, but he continued to do it. No notice, coming into the house with a key. They never gave 24 hours notice. She said 'I have right to monitor you or check on you.' That's the things I'm asking. This is really, really breaking the law.

The Landlord said that what the Tenant said is not true. She said:

> My friend [T.X.] got into her house; he always gave her notice in 24 hours. Another friend went to collect my mail and stayed outside of the house to collect my mail. Every Saturday or Sunday. I was in China last year.
>
> [T.X.] gets into the house without her agreement? He said he never did that. I gave [T.X.] my case because he has to help me when [there's] some emergency in the house.
>
> Vegetables. Only one time. She helped us to plant the seeds in the yard and water them. Before that, 24 hours sends a message to [the Tenant] that he will come tomorrow. We will come back in the summer, so my parents want my friend to plant the seeds. This is a public area. I only rent two bedrooms to [the Tenants]. Another tenant is in the basement. They share the property. They can come in, because it is public area.

> They have two bedrooms upstairs and living room and den and a kitchen, a family room for [the Tenants].

The Tenants submitted a document which they indicated were text communications between the Parties that had been translated into English. The first page of these communications is a “Translator’s Declaration”, which has the translator’s statement that she is:

> A certified member in good standing with the Society of Translators and interpreters of British Columbia [STIBC Member no.]; language combination: Mandarin Chinese to and from English, with a Master of Arts in Translation and Interpretation (English to and from Chinese), hereby declare that I did translate into English the attached Chinese documents (Email messages and selected conversations from WeChat screen shots chosen by client) and that, to the best of my knowledge, the translation reflects the contents and meaning of the Chinese original.
>
> Signature: [provided] Stamped
> Phone number [provided] [Name, Member No.
> Address [provided] Certified Member]
> Date: February 28, 2020
>
> Certified Court Interpreter
> [card with photograph and STIBC Designation]

The following was contained within the translated messages between the Parties:

> Re: Something is serious, you can’t do that anymore!
> Sender: [Landlord]
> Time: 2018-11-11 (Sunday) 9:09 AM
>
> [Tenant, M.L.]
> My surveillance system has four cameras facing the front and back yard of my house. They are merely to ensure the safety of the house and were not installed indoors, so there are no privacy issues. I delegated my friend [T.X.] to take care and maintain my house, and we are only observing the outside of the house through the surveillance system.
>
> . . .

Sender: [Landlord]
Time: 2019-03-08 (Friday) 00:36

My niece came back from Alberta. She wants to get her stuff in the house. When you are convenient in these two days, can you let her in for a while? Thank you!

[Landlord]
You don't need to dwell on the surveillance issue. Let me say this one last time, I am the Landlord, I have obligation to monitor my house. Every landlord does that. And I didn't even use it, because it can't be installed on my [cell] phone. I did not discover things that you did through the surveillance because it does not monitor things inside the house. So it was totally useless. If you want to litigate, do it against [T.X.]. I think you are the one that will suffer. Think twice. Let everyone calm down first.

[To: Landlord, T.X.]
2018-11-08 10:38 PM
Delete the software installed in your cell phone to
Monitor the house in one minute, or I will sue you
immediately!

Ok, you are just a tenant
It was authorized by the landlord. Don't you even
Understand that.

Authorized?
Go and ask a lawyer
Before you respond to me

I don't even need to ask.

In the hearing, the Landlord said that her friends can access to the backyard, because the backyard and garage are common areas. She said the flower bed is in the Yard, and that she can visit this common area without notice.

The Landlord said that before the Agent would attend the residential property, he would contact the Tenant via cell phone. She said: "I also noticed he only visited her one time on November 7th. He gave her notice on November 2nd. I was not in Canada. He has the evidence."

The Tenant submitted a copy of a screen capture which shows eight emails from the Landlord on November 11, 2018, three emails on November 12, 2018, four emails on November 13, 2018, two emails on November 14, 2018. The Tenant submitted similar screen captures illustrating the numerous emails she received from the Landlord in November and December 2018.

The Agent said: “I posted the notice on the door for entry on November 7, 2018. That’s the only time. After that time, I never went to my friend’s property. If you like I can submit this evidence to you.”

Monetary Order for Emergency Repairs → $168.00

The Tenant said that on December 24, 2018, she locked her keys in her bedroom, and this was her only key. She said she had to hire a locksmith, who said they would charge her $80.00 to take the lock off. She said they told her that she would have to purchase a new lock from a hardware store for $86.00. The Tenant said that the Landlord had a spare key, but that she would not help the Tenant.

The Landlord said that she was not in Canada on this date. She said the Agent had her keys, but not for the Tenant’s bedroom door. She said the repair is not for a defective lock, but because the Tenant locked her keys inside. She also said that the Tenant damaged the door doing this.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Damage or Compensation Under the Act → *$33,332.00*

Section 29 of the Act sets out the restrictions on a landlord’s right to enter the residential property, 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).

The Tenant paid the Landlord $3,250.00 in rent and utilities per month for eight months for a total of $26,000.00. As such, the Tenant has claimed $7,332.00 more in compensation than she paid in total for the duration of the tenancy. She did not explain why she is claiming this particular amount, other than to imply that the tenancy as a whole was tainted by the Landlord's behaviour.

The Tenant claimed that the Agent came to the rental unit everyday. As evidence, she noted that the bathroom light was left on once, and she recalls having turned off all the lights before she left. She also noticed that a bag of garbage had been taken. I find this is evidence of an unannounced entry on one occasion. I note that the Agent is the only person, other than the Landlord (who was out of the country), and the Tenant who has a key to the residential property. However, there was another tenant living in the basement of the residential property who could have used the Tenant's bathroom. I find that it is more likely than not that the the latter possibility is mere speculation.

The Landlord's evidence is that before the Agent would attend the residential property, he would contact the Tenant via cell phone. She said he only gave the Tenant 24 hours' notice on the door once. She also said that she was not in Canada at that time and that the Agent has the evidence. Neither the Agent nor the Landlord submitted any documentary evidence to establish that they complied with the Act in terms of visiting the rental unit.

The Landlord also stated in a text message noted above that her "…niece came back from Alberta. She wants to get her stuff in the house. When you are convenient in these two days, can you let her in for a while? Thank you!" I find that this does not amount to compliance with section 29 (1)(b) of the Act.

I also find that the Landlord's testimony in the hearing supports the Tenant's contention that the Agent visited the residential property on multiple occasions, although, there is no indication of how many. Further, in the hearing, the Landlord did not indicate how she knew what the Agent was doing in her absence from the country. Also, the Landlord's evidence is inconsistent with that of the Agent when he said he posted a notice on the residential property door on one occasion, and he said: "After that time, I never went to my friend's property." This evidence could lead one to believe that the Agent visited the residential property once, and gave proper notice. However, the I find the Landlord's evidence of the Agent calling the Tenant prior to every visit implies he visited more than once. Given the internal inconsistency in the Landlord's evidence before me, I find that the Landlord's and the Agent's credibility is diminished. Accordingly, I find I prefer the evidence of the Tenant in this regard, that the Agent visited the residential property regularly and without proper notice pursuant to the Act.

Based on the evidence before me overall, I find on a balance of probabilities that the Landlord breached section 29 (1)(b) of the Act by directing or allowing her Agent to attend the residential property without giving proper notice to the Tenant.

Further, the Tenant asserted that the Landlord's other friend(s) would come over regularly to do something in the garage and to tend a vegetable garden in the back yard. The Landlord said the Tenant has access to these common areas, but because they are common areas, members of the public, such as her friends, may also attend them without first giving notice.

Section 1 of the Act provides definitions of terms, including:

> '**common area'** means any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants;

Based on this definition, I find that common areas are reserved for the use of tenants and any landlords who may be inhabiting the residential property. It is not for the Landlord's friends and relatives to use, or for the Landlord to use, unless specifically set out in the tenancy agreement. The Landlord said that the tenancy agreement the Tenant submitted was not the final document; however, the Landlord did not submit a

copy of a final tenancy agreement setting out the Landlord's authority in this regard.

I find that the Landlord's friend(s) attended the residential property each Saturday to enter the garage, which the Tenant had to open for the friend. I find that the garage friend and the Landlord's other friend(s) who used the back garden were, essentially, agents of the Landlord who attended the residential property without giving 24 hours' notice. I find that these visits affected the Tenant's quiet enjoyment of the residential property, given the frequency of the visits.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

RTB Policy Guideline #6 ("PG #6") deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of the tenancy agreement. PG #6 states:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
>
> A landlord is obligated to 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 includes 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.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[emphasis added]

I find that the Landlord was aware of the Agent's and the friends' regular attendance at the residential property, but did nothing to stop it. I find that the unannounced visits by the Agent would have left the Tenant unsure of when someone was in the rental unit without her knowledge and what he was doing there. Further, I find that the weekly visits by the friend who required the Tenant to open the garage door constituted an unreasonable disturbance of the Tenant's right to quiet enjoyment. In addition, I find that without specific authorization set out in the tenancy agreement, it was inappropriate of the Landlord to have authorized her friends to plant and maintain a vegetable garden at the residential property, given that neither the friends nor the Landlord occupied the residential property.

In addition, the Landlord acknowledged the presence of cameras monitoring the front and back of the residential property. While cameras are not illegal, I find that this further contributed to the Tenant's feeling of being watched by the Landlord and the Agent. In addition, I find that the Landlord's statement in a text message amounts to a threat: "If you want to litigate, do it against [T.X.]. I think you are the one that will suffer. Think twice. Let everyone calm down first."

I find that these disturbances did not deprive the Tenant of her use of the residential property, and that she was still able to live there for eight months; however, I find that that the value of her tenancy was impaired by the regular presence of the Landlord's friends, the surveillance cameras, and the Landlord's attitude toward the tenant, as expressed in the translated communications between the Parties.

The loss of quiet enjoyment of a residential property is comparable to a loss of the right to privacy. Determining damages in loss of privacy claims is difficult, as stated in the Federal Court case of *Chitrakar v. Bell TV,* 2013 FC 1103 (CanLII):

> [24] The fixing of damages for privacy rights' violations is a difficult matter absent evidence of direct loss. However, there is no reason to require that the violation be egregious before damages will be awarded. To do so would undermine the legislative intent of paragraph 16*(c)* which provides that damages be awarded for privacy violations including but not limited to damages for humiliation.
>
> [25] Privacy rights are being more broadly recognized as important rights in an era where information on an individual is so readily available even without consent. It is important that violations of those rights be recognized as properly compensable.

Based on the evidence and authorities before me, overall, I find that the combination of the disturbances that the Tenant endured, with the Landlord's knowledge and/or authorization, amounted to a breach of the Tenant's right to quiet enjoyment of the rental unit. As such, I award the Tenant with fifteen percent of her rent per month for the eight months of the tenancy from the Landlord in the amount of **$3,600.00**.

Monetary Order for Emergency Repairs → $168.00

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are made for the purpose of repairing:

> (i) major leaks in pipes or the roof,
> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.

Section 33(2) of the Act requires the Landlord to "post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs."

First, I find that the Tenant having locked herself out of her bedroom does not constitute an “emergency” pursuant to the Act. Second, I find that the Landlord had nothing to do with causing this situation, and since neither she nor the Agent had a key to the bedroom, there was nothing they could do to assist her. I find that the Tenant was responsible for this incident, and therefore, I dismiss her claim against the Landlord in this regard without leave to reapply.

The Tenants have been partially successful in their Application, therefore; I also award them recovery of the **$100.00** Application filing fee.

The Tenants are granted a monetary order in the amount of **$3,700.00** from the Landlord.

Conclusion

The Tenants’ claim for recovery of the $1,500 security deposit is dismissed, as it was already awarded in another RTB decision. The Tenants may file that monetary order in the Provincial Court (Small Claims) and have it enforced as an Order of that Court.

The Tenants are successful for her claim for monetary compensation for her loss of quiet enjoyment of the rental unit in the amount of $3,600.00. The Tenants are also awarded recovery of the $100.00 Application filing fee. I grant the Tenants a Monetary Order from the Landlord in the amount of **$3,700.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 05, 2020

Residential Tenancy Branch