Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes CNC, MNDCT, RR, RP, PSF, LRE, FFT

Introduction

This second hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlords' One Month to End Tenancy for Cause, dated September 30, 2020 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlords to complete repairs to the rental unit, pursuant to section 33;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, the landlords' lawyer, the two tenants, and the tenants' lawyer attended the second hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that their lawyer had permission to speak on their behalf. The tenants confirmed that their lawyer had permission to speak on their behalf.

"Witness RM" was excluded from the outset of the second hearing and did not testify. The landlords' lawyer confirmed that she did not want to recall witness RM to testify, as she was providing submissions on his behalf, as he was a landlord co-owner of the rental unit.

The two landlords named in this application and witness RM are collectively referred to as “landlords” in this final decision, as both parties referred to him as a landlord co-owner of the rental unit.

This second hearing lasted approximately 77 minutes. The tenants and their lawyer spoke for approximately 38 minutes. The landlords and their lawyer spoke for approximately 26 minutes. The remaining 13 minutes was spent discussing service of documents, the hearing procedure, and obtaining the parties’ contact information.

The landlords’ lawyer confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenants’ lawyer confirmed receipt of the landlords’ evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants’ application and the tenants were duly served with the landlords’ evidence.

At the outset of the second hearing, both parties confirmed that they attended a previous Residential Tenancy Branch (“RTB”) hearing with a different Arbitrator on November 2, 2020, after which an “interim decision” of the same date was issued (“first hearing”). Both parties agreed that the interim decision adjourned the tenants’ application to this second hearing date of January 21, 2021, in order to allow the tenants to resubmit and rename their monetary evidence on the RTB online website. The interim decision indicated that the other Arbitrator was not seized of this matter. I notified both parties that I received the tenants’ resubmitted evidence on the RTB website after the first hearing.

During the second hearing, both parties agreed that the tenants vacated the rental unit on October 31, 2020. The tenants’ lawyer confirmed that the tenants were only pursuing the monetary portion of their application, not the relief related to an ongoing tenancy. Accordingly, the remainder of the tenants’ application, with the exception of the monetary claims, is dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at the second hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2020 and ended on October 31, 2020. Monthly rent in the amount of $2,200.00 was payable on the first day of each month. A security deposit of $1,100.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties.

The tenants seek a monetary order of $9,050.00, plus the $100.00 application filing fee. The landlords dispute the tenants' entire application.

The tenants' lawyer stated the following facts. The tenants believe that they have a tenancy agreement with witness RM, who is a landlord for this rental unit. The tenants are seeking aggravated damages from the landlords for a material breach of the tenancy agreement for three categories: 1) failure to provide facilities in the tenancy agreement and addendum; 2) failure to maintain the premises; and 3) a loss of quiet enjoyment. In the first category, the landlords breached a material term of the tenancy agreement, which is horse boarding, because they did not build a barn, as promised, to accommodate the tenants' horse at the rental property. The tenants were then forced to board their horse elsewhere at a cost of $735.00 per month. The tenants have a large dog and were told that they would have a private driveway, but the landlords left their tractor idle, parked near the garage, and made it "unsafe and uninhabitable" for the tenants.

The tenants' lawyer stated the following facts. In the second category, the tenants' bedroom window fell out about one to two months after they moved in. This caused insects and tractor exhaust to enter through this hole. The tenants used cardboard and towels to cover this area. The landlords made appointments to fix it and then cancelled, as per the emails they provided for this hearing. The tenants provided photographs of the area. There were plumbing issues, including fluctuations in the shower water temperature, from freezing to scalding, and low water pressure. The tenants were both scalded and provided photographs of same to the landlords. The tenants were deprived of their master ensuite shower, for which they provided emails notifying the landlords. There were leaks on the patio roof, the tenants provided emails notifying the landlords,

there were no dry spots, so their dog could not use this area in its wet condition. The tenants requested a tarp if no repair would be done by the landlords. There were leaks in other areas of the rental unit, the tenants provided emails notifying the landlords, as well as photographs of the areas. There were leaks on the laundry room floor from a washing machine leak, causing discoloration on the carpet. There was also a dishwasher issue. The move-out condition inspection was postponed because of the covid-19 pandemic, the tenants prepared a move-out condition inspection report for the landlords, and the landlords refused to sign it. On August 24, 2020, the tenants notified the landlords in writing, that there was a breach of material terms, there was a lack of repairs and facilities agreed upon, and the landlords were given five days to comply but did not respond.

The tenants' lawyer stated the following facts. In the third category, there was a loss of quiet enjoyment because the landlords harassed the tenants in their professional and private lives. The neighbours' dog attacked the tenants' dog and when the tenants told the landlords, they refused to call bylaw officers and said they would try to work it out on their own. The tenants walked their dog at a different time to avoid the neighbours' dog, but it was not safer. The landlords engaged in a "campaign of harassment and interference" against the tenants and sent a letter to the tenants on August 22, 2020, accusing them of running over a dog and filming children. In the parties' tenancy agreement addendum, the tenants were allowed to have four birds, but the landlords raised an issue about this. The landlords engaged in defamation against the tenants, which is the subject of Supreme Court of British Columbia ("SCBC") proceedings. The female landlord was yelling in the tenants' pet store and encouraging people to discontinue their business with the tenants. Witness RM filmed the tenants in their car and followed the tenants with his tractor at the rental property, for which there is a video. Witness RM entered the rental unit without notice or being invited, which is trespassing, as the male tenant has a drone business with lots of expensive equipment and confidential information. The police were not called by the tenants, regarding the trespass and harassment claims.

The tenants' lawyer stated the following facts. Aggravated damages are an arbitrary assessment. The tenants do not have receipts or invoices to support their monetary claims, except for the horse boarding fees. The tenants seek $9,050.00 total. Regarding the first category, the failure to provide facilities in the tenancy agreement and addendum, the tenants seek the following amounts. The tenants claim $850.00 for storage costs after vacating the rental unit. The tenants seek $500.00 to remove the chain-link fence. The tenants seek $500.00 (rather than the $5,000.00 at $50.00 per day for 100 days) for staying in a hotel for months, while trying to find a new place for

them and their animals. The tenants seek $3,200.00 at a rate of $400.00 per month for 8 months, from August 2020 to March 2021 (the difference between the $300.00 per month they would have paid to the landlords if they boarded their horse at the rental unit and the $700.00 they ended up having to pay elsewhere). Regarding the second category, the failure to maintain the premises, the tenants seek $500.00 for a lack of plumbing, $400.00 for a lack of a bedroom window, $600.00 for the loss of the use of the master shower, and $500.00 for the loss of the use of the back deck. Regarding the third category, the loss of quiet enjoyment, the tenants seek $2,000.00, at a rate of $500.00 per month for 4 months.

The landlords' lawyer stated the following facts. The landlords dispute the tenants' entire application. Regarding the first category, the failure to provide facilities, the landlords estimated the summer or fall of 2020 for completion of the horse barn in the addendum to the parties' tenancy agreement. The tenants made other additions to the addendum but did not raise any issues with the above completion date. In mid-June 2020, the landlords informed the tenants that it was no longer feasible to keep a boarded horse at the rental property, so no facility would be provided. The tenants never paid the extra $300.00 per month for horse boarding to the landlords. The horse barn was not a material term of the tenancy agreement, as the tenants moved in before the construction was to begin. In late August 2020, the tenants told the landlords it was a material breach of the tenancy agreement, only because they were given a 1 Month Notice by the landlords. The tenants then waited until the end of October 2020 to move out. Even if the Arbitrator finds a material breach, the tenants did not suffer any damages. They signed the addendum knowing the terms, they estimated damages based on $300.00 per month, which they never paid and were never charged. The tenants would have been responsible for the costs of self-boarding the horse even at the rental property, including cleaning and feeding. The tenants' claims are for a full-board of their horse at a different place, so they can obtain a windfall.

The landlords' lawyer stated the following facts. Regarding the first category, the failure to provide facilities, the tenants were not entitled to a private driveway or a dog area at the rental property. The tenancy agreement only provides for a garage and parking. The landlords parked at the rental property until mid-June 2020 and the tenants only complained 2.5 months into their tenancy and set up a security camera, once the landlords told them that there would be no horse barn built. Regarding the second category, the failure to maintain the premises, the landlords provided emails showing the tenants delayed and refused entry for repairs to be done. The landlords repaired the window and the plumbing. The landlords replaced the gasket and fixed the washing machine. There was no complaint regarding the patio leaks.

The landlords' lawyer stated the following facts. Regarding the third category, the loss of quiet enjoyment, the landlords served the tenants with a 1 Month Notice at the end of August 2020 because the tenants interfered with the landlords' use of the property. The neighbours are not tenants of the landlords, they are third parties, who the landlords have no control or responsibility over. The neighbours told the landlords that the tenants' dog attacked their dog. The defamation issue is the subject of separate proceedings at the SCBC, regarding a different property, not the rental unit. The tenants did not provide any notice to vacate, the landlords saw moving trucks on October 29, 2020. The tenants' monetary claims lack merit and lack documentary evidence regarding expenses.

Analysis

Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlords 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of $9,050.00 without leave to reapply.

I note that the tenants did not provide a monetary order worksheet or a breakdown of their monetary claims to the landlords or the RTB. They initially applied for $35,000.00 from the landlords and then reduced their claim at this second hearing to $9,050.00. They did not amend their application to reduce their claim prior to the second hearing, nor did they provide notice to the landlords of same. The tenants' lawyer agreed with the above information and simply announced the tenants' monetary claims and breakdown during the second hearing.

I find that the tenants failed part 3 of the above test, as they did not provide sufficient documentary evidence of the actual amounts being claimed in their monetary order. The tenants' lawyer confirmed that the tenants did not provide estimates, receipts, invoices or other such documents to support their claim, with the exception of one document created by the tenants to explain their horse boarding fees.

Breach of a Material Term

A material term is defined in Residential Tenancy Policy Guideline 8 (emphasis added):

> *A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*
>
> *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.* ***It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.***
>
> *The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the* ***same term may be material in one agreement and not material in another****.* ***Simply because the parties have put in the agreement that one or more terms are material is not decisive****. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true* ***intention of the parties in determining whether or not the clause is material.***
>
> *To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*
>
> - *that there is a problem;*
> - *that they believe the problem is a breach of a material term of the tenancy agreement;*
> - ***that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and***
> - ***that if the problem is not fixed by the deadline, the party will end the tenancy.***
>
> *Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute*

> *arises as a result of this action, the **party alleging the breach bears the burden of proof**. A party might not be found in breach of a material term if unaware of the problem.*

I find that the tenants voluntarily vacated the rental unit and they were not forced to move. The fact that the tenants chose to leave when they did, was up to them. The tenants initially applied to dispute the landlords' 1 Month Notice and then moved out on October 31, 2020, deciding not to pursue their dispute at the first RTB hearing on November 2, 2020.

I find that the tenants were unable to show that they were forced to vacate the rental unit, due to breach of a material term. I find that horse boarding was not a material term of the tenancy agreement. I note that it was referenced in the parties' addendum as a future barn that would be built but I do not find that it was material to both parties, and it was not referenced in that manner in the addendum. I find that it was a future event, that did not occur, and the tenants moved in April 2020, prior to when the barn was supposed to be built in summer/fall 2020, and continued to reside there long after they were told in mid-June 2020 that the barn would not be built, finally leaving in October 31, 2020.

I find that the tenants did not provide a material breach notice to the landlords until August 24, 2020, alleging breaches back to April 1, 2020, the first day of their tenancy. This notice was given months after the tenants discovered breaches and months after they were told by the landlords that the barn would not be built. If horse boarding was so material to the tenants, they would have provided earlier notice to the landlords, moved out earlier, or taken some form of earlier action. I find that the tenants gave the landlords an unreasonably short deadline of five days, to comply with their many demands. The tenants also indicated that their breach letter was "without prejudice."

Damages for Failure to Provide Facilities and Maintain Premises

I find that the landlords adequately dealt with the tenants' complaints in a reasonable time period, by inspecting and repairing the areas of complaint, including the window and the plumbing issues. I find that the tenants delayed inspections and repairs by refusing entry to the landlords, requesting additional notice be provided by the landlords, denying access to the landlords when the tenants were not present at the rental unit, and indicating that they could wait longer since enough time had already passed. The landlords provided emails regarding same and the tenants' lawyer referenced these emails in his submissions during the second hearing.

I find that the tenants are not entitled to a private driveway or a dog area, as these facilities are not included in their tenancy agreement or addendum. The addendum only permits the use of a garage and parking outside the garage.

The tenants' claims for $500.00 for a lack of plumbing, $400.00 for the lack of a window, $600.00 for lack of a shower, and $500.00 for the lack of a back deck, are all dismissed without leave to reapply. I find that the above amounts were arbitrarily chosen by the tenants. I find that the tenants failed to justify the above numbers for their alleged losses.

While the tenants' lawyer indicated that aggravated damages are an arbitrary assessment, there are other claims that could have been proven with documents, such as storage fees of $850.00, costs to remove a chain-link fence of $500.00, and hotel expenses of $500.00. The tenants maintained that they did not have these documents when they filed their application, yet they moved out on October 31, 2020, almost three months prior to this second hearing date on January 21, 2021. Therefore, I find that they had ample time to submit these documents prior to this hearing, since this matter was adjourned on November 3, 2020, well before this hearing date of January 21, 2021. I find that the tenants moved out of the rental unit on their own accord, so they are responsible for their own moving, storage, and animal costs. The addendum also indicates that the tenants are responsible for fencing their dog. The above claims are dismissed without leave to reapply.

The tenants provided one document, purporting to be proof of e-transfer payments for horse boarding fees. However, it is not a bank document confirming e-transfers made from a bank account, nor is it emails confirming payments made by e-transfer. It is a worksheet created by the tenants, indicating payments of $735.00 were made to an email address twice, totalling $1,470.00. I do not find this to be sufficient proof of e-transfer payments by the tenants. The tenants would be responsible to pay for self-boarding costs for their horse even if the barn was built at the rental property, as costs for feeding, bedding, and maintenance were all indicated as the tenants' responsibility in the addendum. The tenants did not pay the $300.00 per month to the landlords to board their horse, in any event. The tenants' claim for $3,200.00 in horse boarding fees is dismissed without leave to reapply.

Loss of Quiet Enjoyment

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

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.

Residential Tenancy Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

> *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.*

Residing at the same property sometimes leads to disputes between parties. Both parties are entitled to quiet enjoyment of their units, including completing activities of daily living and using their units for different purposes. The tenants cannot decide how or when the landlords' unit is to be used and for what purposes. The rights of both parties must be balanced.

I find that the tenants failed to show that they suffered a "campaign of harassment" from the landlords. While both parties did not get along, there were issues on both sides, as the landlords complained about the tenants' behaviour, which is why they said they

issued a 1 Month Notice to them. I find that the complaints that the tenants raised against the landlords were a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above.

I find that the landlords are not responsible for and cannot control the behaviour of third parties, their neighbours. I accept the landlords' lawyer's submissions that the neighbours were not tenants of the landlords, so the landlords had no control over the neighbours or their dog. The tenants complained that the neighbours' dog attacked their dog and the landlords refused to call bylaw officers; yet, the tenants did not call bylaw officers or animal control themselves, even though they had the ability to do so.

The tenants did not provide documentary proof of police reports, nor did they produce police witnesses to testify at this hearing. The tenants' lawyer confirmed that the tenants did not even call the police, related to their criminal claims for harassment and trespass.

The tenants' defamation claim is being adjudicated at the SCBC. During the hearing, I notified both parties that I did not have jurisdiction to decide this claim, as it is substantially linked to a matter before the SCBC, as per section 58(2)(c) of the *Act*.

Accordingly, I find that the tenants are not entitled to a loss of quiet enjoyment of $2,000.00 from the landlords and this claim is dismissed without leave to reapply.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The tenants' entire 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: January 22, 2021

Residential Tenancy Branch