



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$10,092.50 for damage or compensation under the Act; and to recover the \$100.00 cost of her Application filing fee.

The Landlord and an agent for the Tenant, M.E. ("Agent"), appeared at the tele-conference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Agent 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. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2021, and was scheduled to run to May 31, 2022, operating on a month-to-month basis thereafter. However, the Parties agreed that the tenancy ended on November 1, 2021, when the Tenant moved out, based on a Mutual Agreement to End the Tenancy.

They agreed that the Tenant paid the Landlord a monthly rent of \$1,425.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit. They agreed that the Landlord was ordered to return the Tenant's \$700.00 security deposit, pursuant to an Order of the Director dated June 10, 2022.

The Tenant applied for a monetary order of \$10,095.50 for the return of the rent she paid while living in the residential property. In the hearing, the Tenant's Agent explained the claims as follows:

Reasonable privacy was compromised throughout tenancy. The amount of compensation was drawn off previous tenancy decisions made, based off of the rental cost she had put out for the tenancy, as well as the cost of moving out of the unit into a new space.

Our July 5 package has the BCCA decision. Her argument is that the nature of the relationship between [the Landlord] and herself was intimidating and inappropriate and her right to reasonable privacy and freedom was compromised. She had concerns that there was a human rights complaint aspects to that, which made her feel unsafe in her housing. The recoupment of costs was based on previous tenancy decisions for emotional distress.

The cost of the move is included – a new security deposit of \$755.00 and the cost of moving, no one to help her. Moving costs of the truck – see receipts for rental truck and security deposit and the rental for her new unit.

In her undated, written statement submitted to the RTB and served to the Landlord, the

Tenant said:

Due to extreme stress, I believe my right to reasonable privacy and freedom from unreasonable disturbance has been compromised throughout my tenancy and extending beyond my move out of the rental unit, I request the entirety of my rent for the duration of my tenancy 1425\$ x 5 months + 1 day @ 47.50\$ (Attempt #1 to Schedule 'Move-Out' Inspection.pdf), damage deposit (700\$), 45\$ Uhaul rental, my damage deposit (DamageDeposit(redacted).pdf) for new rental of (725\$) and first month's rent for November 1450\$ (NewResidenceLease (redacted).pdf), for a total of 10,092.50\$. This is not including the lost wages I have incurred from being worried sick and having headaches and nausea over this matter and missing a combined weeks worth of wages. Information on the new rental suite (address) has been redacted due to my safety. I don't know the depths [the Landlord] is willing to go to seek revenge and I'm concerned for the safety of myself and my personal items, as well as the relationship I have with my current landlord.

The Tenant spoke of the Landlord issuing "veiled threats" of eviction:

There are a number of concerns I have regarding his rental unit as well as his professional behaviour, starting from week two, where he made a veiled threat of my tenancy, regarding my bicycle storage outside. When I first looked at the suite, prior to lease signing, I had mentioned I had a bicycle and that the utility room would be nice to store it in, in which [the Landlord] replied, OR you can store it outside. Which, I didn't think much at the time as I didn't know him and didn't realize that throughout my tenancy, he would be using every single word, action, email and text against me. So, I didn't feel the need to clarify, nor did I see this would be a problem. If I had known he would expect me to lock a 4,000\$ bicycle outside, I would NOT have proceeded with renting the unit.

Two weeks into my tenancy, he sent me an email (bicycle storage (highlighted. pdf)) stating he would like my bicycle stored outside, with the tone of 'or else get out', which I felt was a veiled threat, and set the tone for all emails to follow, in which he states, 'due to material terms of our agreement', which also are a veiled threat of eviction. All over small matters, which wouldn't be much to anyone else. I had just moved in and decided to be complicit, because I felt he was wanting me out immediately and it was such an inconvenience and expense I was unable to pay for at the time.

I asked the Agent why the Landlord is responsible for paying the costs the Tenant is claiming. The Agent said:

Physical monetary damage – based on a previous decision made for compensation for emotional disturbance that occurred. A number of incidents that occurred during her tenancy that she discusses in her statement.

I asked the Agent for some examples, and she said the following:

The first was she felt like there were rights, repeated email complaints that she was under constant threat of eviction. She included the emails in her evidence. He was micromanaging how she was living. She felt he wants her to move out. He'd use wording like 'per our tenancy agreement'. 'You're making noise during our non-wake time hours – kitchen sounds and an alarm clock'. He made ongoing email complaints

A hot topic was about his expressed concern about the humidity after a shower, that she wasn't turning the fan on, but she was opening the bathroom window and other windows. There's a window ... no door on the bedroom. She would have showers and felt he was looking through the windows of the suite. He would send repeated complaints about opening windows and not turning the fan on. He had taken a picture of the window. She felt uncomfortable. Why was he walking around the unit? ... She's a single woman living alone and felt quite uncomfortable. And other interactions with [the Landlord]. Comments he had made that are in her statement. Are these sexual in nature was her concern? There were those things happening that led up to an email on October 19, where that photo was attached and make her feel uncomfortable.

I looked in the Tenant's evidence, but could not find an email dated October 19. The Agent continued:

In your previous decision, he had stated in the hearing 'he felt like she was a ticking time bomb and did everything he could to get her to leave.' She felt he was doing this, constant threat of eviction. She missed work several times due to the stress of that. She couldn't do anything right with this landlord.

The Landlord replied:

I do have a few comments; it's a bit difficult to address each one. The easiest

way to go through things is chronologically. My statement – if I were to go briefly on the points mentioned.

Constant threat of eviction? People can feel how they feel, but proving that that was the case? Can she produce any documents showing that I was threatening eviction? Even the ones she has included as reference. I offered her to break the lease if she didn't want to follow the tenancy agreement.

Reference "D" is the initial contact email where I sent her a copy of the addendum of the rental unit. These are pretty standard terms: use the fan when you cook and use the fan when you shower. The quiet hours are 10 – 6 Monday through Thursday and midnight to 8 a.m. on Friday and Saturday.... The addendum was signed by her. She signed the addendum and I encouraged her to read through it for agreements like running a bathroom fan when showering.

Clause 9 of the Addendum addresses the need to use fans within the kitchen or bathroom to keep the humidity down.

Clause 15 of the Addendum addresses quiet hours, as follows:

15. Both the Tenant and the Landlord will respect a period of quiet, between the hours of 2200 and 0600 Monday to Thursday and 0000 to 0800 on Fridays and Saturdays.

The Landlord continued:

She agreed to these rules prior to the tenancy. It is reasonable for me to ask her to follow the rules. If you were to go through my references, please refrain from making noise before 6 a.m., because you're waking us up. And the alarm clock. There's a video walk through Q-13, you can see the radio was a battery operated radio on that was on the fridge in the kitchen, and this is directly below my bedroom.

I watched the inspection video in the Landlord's evidence Q-13. The Landlord was respectful of the Tenant's belongings, wearing a mask, taking off his shoes, not touching anything, just inspecting for damage, which he said he did not find at that point. However, the Tenant had left approximately 10+ signs around the rental unit as well as writing on the bathroom the word "CUNT" with comments such as:

- I gave you the chance to apologize;

- Will try to get you fired from your job;
- You don't pay taxes;
- Hold you in contempt for existing;
- Listens to your life;
- Will evict you for nothing; and
- What a CUNT looks like (written on the bathroom mirror).

The Landlord continued:

I never wrote some of the things she claimed I wrote, such as these threats of eviction or 'move out or else' – I never said this. I said if you don't think you can follow the rules that you agreed to, you can break the lease. If you don't like the rules, you can break the lease. I was never pointing a gun. She might have felt that way, but it was not expressed as a threat. These are the rules, but I'm happy to have you leave; it's had a negative impact on my life.

She mentioned the bedroom door was removed - it was removed at her request - because it swings into the bedroom and it's impossible to have a bedside table if you have a queen-size bed. Is there an email that she expressed this concern about the bedroom? She never asked to have it put back in.

I never looked through the bedroom window, and I am offended by the allegations. She referenced a conversation: 'I noticed you showered and didn't turn the fan on'. I wasn't hanging out the bathroom door - it's that the layout of my unit is that I'm walking by the kitchen and bathroom windows. See all the pictures at N-1 though N19, and N16 – 19 are videos to help you understand how I would be walking by these windows. I am a hobby mechanic; often time I have to go to the garage by those windows when I'm home.

Last thing, this talk about threatened her livelihood that she mentions in her statement. I never hid the fact that I called her employer when she was waking us up on 4:45 in the morning banging around the kitchen. I called her boss, because I thought she might have been given fake references. I called both references back, because I was trying to figure out if these were real people. I said I was concerned for her, because she was acting strange and irrational. She thinks I tried to get her fired. She claims that I knew she was in a rehab. What's missing is that if she has to be drug and alcohol free – she would have to fail a test to be fired. That would get someone fired for being drug and alcohol free. I wanted to get the information that he was actually the boss.

The Agent stated:

He says there's no evidence – there's testimony that he said he felt like she was a ticking time bomb and he did everything to get her out of the unit. The Act says you are free from unreasonable disturbance. Her position is that the number of emails and the number of issues were beyond a reasonable expectation. He was wandering around the unit frequently. He came to the unit without informing her that he was coming. He sent texts: 'I know the windows are open'; it's more a concern than threatening her livelihood.

They mutually signed this tenancy agreement. She did have an alarm clock and a radio in the kitchen. She was not making unreasonable noise. Her making kitchen noises at 5 a.m. when she's making coffee, when she has to be at work at 6 a.m. - her making a cup of coffee is not an unreasonable noise. You have a Tenant and a Landlord who have different ideas, a conflict of interest.

They mutually agreed to end the tenancy, but what occurred after that - he contacted her employer. What benefit at that point would he have to call her employer? Maybe 10 days to end the tenancy. Other than for his own curiosity to call her foreman. She submitted a witness statement from her foreman. He said [the Landlord] said she was behaving erratically. They have a high level of safety standards, high level of scrutiny, regular drug testing. Him making a phone call to her foreman? He told her he received this strange phone call from her Landlord. Her foreman signs a statement – he believes it was malicious, and meant to harm her employment.

The Tenant submitted a statement from her foreman, [E.B.], which addressed the call he had received from the Landlord on October 25, 2021, although this statement was signed on December 8, 2012. The last paragraph includes:

After talking to [the Tenant] about her tenancy issues it made me rethink the phone conversation I had with her landlord. Originally it felt genuine but I truly believe it was more malicious. [The Landlord's] tone and how he was expressing the negativity about [the Tenant] makes me believe his intentions were to harm or jeopardize [the Tenant's] employment or relationship with her foreman. .

[emphasis added]

The Agent continued:

As an outsider, I have seen things really get concerning. He submitted a video with him pacing outside her unit, and it speaks to these rules he wanted followed. He was looking in the unit to see if the rules were followed. [The Tenant] is distraught after her discussion with her boss following the call. She went home and he submitted as video evidence walking outside the unit and her front door is partially open and he's pacing and videotaping. He went out and asked him to stop. Why are you doing this? She deserves privacy, She confronted him that she was nearly fired. I could go to the police, as you could have got me fired from my job. He admits that the did call her employer.

Going and contacting her employer after they signed a mutual agreement, it put her in position that she was under administration investigation. Then he had his phone out videotaping .

The Landlord said:

When [the Agent] was painting this picture - that's not the series of events as they happened. I called her boss - it was on October 25th, and her video was on October 29th - it was four days later. See my evidence Q13.

I never called to get her fired. Even his statements, he thought my statements were genuine. But after he spoke with [the Tenant], he started to think of my phone call in a different light. If I had said stuff like 'she drinks a lot and . . .'. His own words were because of the way I spoke.

She did threaten me in that video, she rolled up her sleeves and punched her fist into her other hand.

Evidence Q13 is a walk through video that shows how she wrote and posted [obscenities] all over the suite. She had written that word on every piece of paper all over the suite. Ridiculous things like I don't pay my taxes and I listen to her having sex.

She has submitted no evidence. How hard would it be to catch me in the act of pacing back and forth? It's all verbal. In my evidence there are 21 paragraphs in the addendum. If the person breaks 21 rules, I will send 21 emails. You're making too much noise – that's what I write. I paid a lot of money for that house; I'm afraid of mould and mildew, and it's reasonable to ask the occupant to use the fan.

She didn't initiate anything. I'm the one who was trying to get her out legally, but she didn't want to live by somebody else's rules. She hasn't rented a lot. Also, that video of her threatening me, I was not pacing, I was walking from the front and I have to pass her windows to get to the back.

I didn't believe she was going to move out on November 1st. I called the police, the RTB, the City numerous times. Given that we were woken up three times in the row, I could initiate an RTB claim for breaking the tenancy agreement.

Analysis

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

The Landlord said, and the Agent did not deny that the Tenant has limited experience as a renter. A landlord is allowed to ask a tenant to follow the rules of the tenancy agreement, without it being a veiled threat of eviction or anything inappropriate happening. Perhaps the Tenant would benefit from some courses on the implications of signing a contract like a tenancy agreement and an addendum. It appears that the Tenant was offended and surprised when the Landlord tried to enforce the rules that they had agreed would govern the tenancy. I find the Landlord's statement sums up the problem: "She didn't want to live by somebody else's rules."

It would be interesting to know what the Tenant thinks the Landlord should do with a tenant who is not complying with the tenancy agreement that the Tenant signed, including the addendum.

In the comments from the Tenant's employer, I note he said he thought the Landlord was genuine at first; however, - two months after the call - he thinks the Landlord had a malicious intent. This raises questions in my mind about the objectivity of the foreman? What did the Tenant tell the foreman about her living situation to turn his opinion around completely? Further, I find the foreman's statement is supportive of the Tenant. There is no evidence that she was at risk of being fired because of this call from the Landlord.

Further, the Tenant submitted a human rights case from the B.C. Court of Appeal; however, there were no submissions made as to how this applies to the Tenant's situation.

The Agent indicated that the amount of compensation was drawn off previous tenancy

decisions made. I am not required to follow other arbitrators' decisions, but I should consider them in my analyses. However, these decisions were not provided as precedents by the Tenant. The Agent said that the recouping of costs was based on previous tenancy decisions for emotional distress and the cost. Again, they did not submit any such decisions for me to consider.

I agree with the Landlord when he said the Tenant has not provided sufficient evidence to make her claim on a balance of probabilities. I, therefore, dismiss the Tenant's claim wholly without leave to reapply.

Conclusion

The Tenant's Application is unsuccessful, as she failed to provide sufficient evidence to fulfill her burden of proof on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

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: July 27, 2022

Residential Tenancy Branch