

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Tenants attended the hearing.

The Landlords' Agent (the Agent) attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Tenant M.F. testified that the Landlords were personally served with the Proceeding Package on or around November 15, 2023. The Agent confirmed receipt. I find that the Landlords were served in accordance with section 89 of the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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Issues to be Decided

Are the Tenants entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that the Tenants moved in on February 26, 2023 with a monthly rent of \$3,950.00, due on first day of the month, with a security deposit in the amount of \$1,975.00 and a pet damage deposit in the amount of \$1,975.00. The rental property is a house with a lower suite which is occupied by a separate tenant (the Lower Tenant). The Tenants reside in the main portion of the house.

Tenant M.F. testified that the Lower Tenant has harassed them since they moved in which has resulted in a loss of quiet enjoyment. Tenant M.F. testified that the Landlord has not taken appropriate steps to rectify the issue. Tenant M.F. testified that they want the Landlord to evict the Lower Tenant or provide compensation so that they can move. The parties were advised in the hearing that I could not make any order for monetary compensation in this Decision as the Tenants did not file a monetary claim against the Landlords.

Tenant M.F. testified that on February 26, 2023 they had friends and family help them move in and celebrate tenant D.R.'s birthday. Tenant M.F. testified that the Lower Tenant banged on their door at 8:00 p.m. demanding that the Tenants' children wear slippers and complaining of the noise. Both parties agree that the Tenants reported the above occurrence to the Landlord. Text messages regarding the above were entered into evidence.

Both parties agree that the driveway is included in the Tenants' rent and that the Lower Tenant is not permitted to park in the driveway. The Tenants' tenancy agreement states that parking for 2+ vehicles is included in the rent. The Agent testified that the Tenants must leave enough space on the driveway for the Lower Tenant to walk up it to access the Lower suite.

Tenant M.F. testified that on February 26, 2023 the Lower Tenant took issue with him parking his trailer in the driveway and Tenant M.F. testified that he advised the Landlord that he was concerned about the Lower Tenant trying to take control of the driveway. Tenant M.F. testified that there was lots of room for the Lower Tenant to walk by.

Tenant M.F. testified that on April 4, 2023 the Lower Tenant sat in the driveway and prevented him from parking his truck and trailer in the driveway. A video of same was entered into evidence. The Agent testified that she got the Tenant to move but the Tenant was then angry with her and felt that she did not have enough space to walk beside the trailer to get to her unit. Tenant M.F. testified that he no longer has the trailer but the issues with the Lower Tenant have continued since it was sold.

Tenant M.F. testified that on April 10, 2023 the Lower Tenant dropped her coffee on the fender of their vehicle and then banged the coffee cup on the car's fender. A video of same was entered into evidence.

Tenant M.F. testified that on May 18, 2023 the Tenant banged her keys on his truck and said "I'll scratch my keys down your car I don't care". A video of the tenant walking by the Tenants' truck saying "down your car I don't care" was entered into evidence. The first part of the sentence was cut off and cannot be heard. The Lower Tenant can be seen walking by the Tenants' truck and hitting it with her keys.

Tenant M.F. testified that also on May 18, 2023 the Tenant walked by their truck and intentionally hit it with her groceries. A video showing same was entered into evidence.

Tenant M.F. testified that in June he parked his boat in the driveway and that on June 20, 2023 the Lower Tenant's son fondled the boat's propeller. A video of same was entered into evidence.

Tenant M.F. testified that on August 3, 2023 the Lower Tenant walked past their truck on her way to the street without any issue, and then turned around and took a picture to complain about the Tenants' parking to the Landlord. A video of the Lower Tenant walking past the Tenants' truck without issue and then taking a picture of the truck was entered into evidence.

Tenant M.F. testified that on August 9, 2023 the Tenant rubbed her fingers along their truck as she walked past. A video showing same was entered into evidence.

Tenant M.F. testified that on September 6, 2023 the Lower Tenant approached their seven and 10 year old kids who were walking home from a friend's house and said "I hate your parents, just so you know." Tenant M.F. testified that the Landlords uploaded a text message from the Lower Tenant proving same. The text message dated September 6, 2023 states:

- Agent- Hi [Lower Tenant], I just got a text from [Tenant M.F.]. He said that his kids were very upset because you told them "I don't like your parents". I don't think thats the proper way of talking to the kids.
- Lower Tenant:
 - I don't care. They don't respect me so I won't respect them. This kiss have bed rude to [R.] and I too.
 - Kids not kiss

Tenant M.F. testified that on September 9, 2023 the Lower Tenant spit on her hand and wiped it on their truck. A video of same was entered into evidence.

Tenant M.F. testified that on November 8, 2023 the Lower Tenant stole their Halloween decorations. A video showing the Lower Tenant reaching up to the roofline with a stick and hitting something out of the camera's view was entered into evidence. Tenant M.F.

testified that he called the police who attended and retrieved the stolen property from the Lower Tenant.

The Agent testified that the Lower Tenant texted her and asked her to have the Halloween decorations removed. The Agent testified that she texted the Tenants and asked them to remove the decorations, but the Lower Tenant removed them within an hour of sending the text asking the Agent to ask the Tenants to remove them. The Agent testified that she told the Lower Tenant not to touch the Tenants' property but she didn't listen.

Tenant M.F. testified that he made the Landlords aware of all of the above issues when they occurred. This was not disputed by the Agent. Tenant M.F. testified that the Landlord has not done anything other than to ask them to get along and to tell them not to incite the Lower Tenant. Tenant M.F. testified that they are constantly harassed by the Lower Tenant and want her evicted. Tenant M.F. testified that his property has been stolen and his kids harassed.

The Agent testified that the Tenants are nice people and that she feels sorry for their troubles. The Agent testified that both the Tenants and the Lower Tenant reports that the other is being rude. The Agent testified that she is doing her best to solve the problems.

The Agent testified that she told the Lower Tenant that she would prefer it if the Lower Tenant would move out and that initially the Lower Tenant agreed but then changed her mind. The Agent testified that the Lower Tenant wants the Landlord to evict the Tenants.

The Agent testified that most of the conflict between the parties involves the driveway which belongs to the Tenants. The Agent testified that she showed the Tenants where they need to park to give the Lower Tenant access to walk up the driveway and that the Tenants have done so, but need to fold in their mirror to give that access. Both parties agree that the Tenants usually fold in their mirror but occasionally forget and have given the Lower Tenant permission to push it in, in those instances.

The Agent testified that she has told both the Tenants and the Lower Tenants to respect each other. The Agent testified that she wants the Lower Tenant to move out but does not believe she has enough evidence to evict her. The Agent testified that the Tenants and the Lower Tenants are adults and should be able to resolve their issues without involving her. The Agent testified that she has done her best and that if there are more issues the Tenants and the Lower Tenants can call the police.

Analysis

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 28(b) of the Act states that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance.

Residential Policy Guideline 6 states that 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.

Based on the testimony of the parties and the videos entered into evidence, I find that the Lower Tenant has frequently and unreasonably disturbed the Tenants by:

- Sitting on the driveway, which is included in the Tenants rent and preventing the Tenants from parking
- Splattering coffee on the Tenants' vehicle
- Banging her keys on the Tenants' vehicle and threatening to scratch the Tenants' vehicle with said keys
- Intentionally hitting the Tenants' vehicle
- Touching the Tenants' vehicle
- Spitting on the Tenants' vehicle
- Confronting the Tenants' elementary school aged children
- Stealing the Tenants' property.

Based on the testimony of both parties, I find that the Tenants made the Landlord aware of the Lower Tenants above listed inappropriate behaviour. I note that confronting children when their parents are not present is particularly egregious. I find that the Landlord has failed to take reasonable steps to correct the behaviour of the Lower Tenant contrary to section 28(b) of the Act. I find that asking the Lower Tenant to behave appropriately and to get along with the Tenants is not enough. The Landlords should have at least given the Lower Tenant written warnings that her conduct is inappropriate and may result in the issuance of a One Month Notice to End Tenancy for Cause. A One Month Notice to End Tenancy for Cause may be appropriate.

In accordance with section 62 of the Act, I Order the Landlord to comply with section 28 of the Act. The Landlord must take reasonable steps to correct the Lower Tenants' inappropriate behaviour which may include written warning and or ending the tenancy with the Lower Tenant.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenant's application is granted for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

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: February 13, 2024

Residential Tenancy Branch