



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, OLC, RP, RR, FF, O

Introduction

This matter dealt with an application by the tenant for Dispute Resolution.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the landlord by registered mail on June 23, 2009. The landlord confirmed he had received them along with the additional evidence submitted by the tenant.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing by the tenant. I have thoroughly reviewed all submissions. On the basis of the solemnly affirmed evidence presented at the hearing and with the review of the documentary evidence provided, a decision has been reached.

Issues(s) to be Decided

- Is the tenant entitled to compensation and if so how much?
- Is the tenant entitled to an order for the Landlord to repair the rental unit?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to reduce her rent for services agreed upon but not provided?
- Is the tenant entitled to recover the cost of filing this application?

Background and Evidence

This tenancy started on May 01, 2009. The tenant pays rent of \$812.00 per month. This is a six month tenancy which ends on October 31, 2009. The tenant paid a security deposit of \$406.00 on April 19, 2009.

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The tenant testifies that when viewing the suite she was told by the building manager employed at that time that various repairs, cleaning and replacements of appliances would be carried out prior to the tenant moving in. The tenant testifies that she was also told that she would have underground parking and a storage locker in the building. Based on these promises the tenant agreed to move in and employed a removal service to move her belongings from Edmonton to Vancouver. Upon moving in the tenant requested an inspection to be completed by the manager however this did not take place. It became apparent that the promised repairs had not been completed. The carpets were in a very poor condition and had not been cleaned; there were no curtains or blinds; the light fixture had not been replaced; the kitchen and bathroom were not clean; there were paint splatters on mirrors and cupboards; the toilet would not flush; the bathroom and kitchen floors had not been replaced and the Bar-B-Q purchased from the previous tenant was missing. The tenant discovered that the underground parking to the building had not been used for five years and she was offered alternative parking in another building. The storage room locker had a broken latch and the room only had one key. The lock to this room has been changed and the tenant does not have access to her storage locker.

Subsequently some repairs were carried out. However, the tenant testifies that she has suffered stress, a loss of quiet enjoyment, loss of sleep and a missed day at work dealing with these problems. She states that the building manager at the time seldom returned her calls and again made promises about when the work would be completed which were not kept. The previous tenant did refund the \$20.00 paid for the Bar-B-Q. The tenant agrees that despite being promised new kitchen appliance the ones she has are in working order. Since living in the apartment the tenant testifies that the carpets remain stained and dirty and other problems have come to light such as the tap in the shower coming off in her hand while taking a shower. The tenant has contacted the City of Vancouver building inspectors who have visited the building and identified numerous problems. The tenant was again promised by the building manager that the repairs would be completed by May 14, 2009. Although some repairs have been completed there remain some outstanding items such as the carpet replacement, painting, vertical blinds and cove base boards.

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The tenant has asked to be released from her six month tenancy and has given one months notice to vacate the suite at the end of August, 2009. The landlord has accepted the tenants Notice and releases her from the tenancy agreement without penalty. The tenant has applied for the return of her security deposit.

The tenant seeks compensation for her moving costs of \$1926.75 to move to a new apartment, as this is a cost she would not have incurred if the rental apartment was up to the promised standard. The tenant seeks \$84.00 for a change of address with Canada Post which is another additional cost she would not have incurred. The tenant seeks the costs for a latch for securing the storage locker of \$4.49 for a replacement Bar-B-Q, propane gas and table of \$44.77, paint remover of \$6.99. The tenant also seeks compensation in the form of the return of her first months rent of \$812.00 for the stress and inconvenience incurred during the first month of occupancy and a reduction of \$200.00 per month for the following three months for incomplete repairs and the state of the carpet. The tenant seeks the return of \$24.75 for the parking permit she had to purchase from the city due to not being able to use the underground parking as promised. The tenant seeks \$950.00 in damages for the loss of quiet enjoyment, mental distress, loss of services agreed upon but not provided and aggravation. The tenant seeks access to her belongings in the storage room. The tenant has also raised concerns about the landlords' agents gaining access to her rental unit without written notice to do so.

The landlord agrees that the repairs were not carried out in a timely manner. The property manager testifies that he has no knowledge of the promise made to the tenant concerning the parking arrangement or the promised repairs and replacements of appliances, carpets and flooring as the building manager at the time is no longer employed by the company. The property manager feels that the issue with the Bar-B-Q is a private arrangement between two tenants. He agrees that the suite was not up to standard and that the tenant is entitled to a reduction for her rent for May, June, July and August 2009. He testifies that as there has been no parking in the building for five years. The tenant was offered parking at a different building and therefore did not require a parking permit. The property manager states that it is unreasonable for the tenant to expect the landlord to pay her moving costs as some repairs

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have now been carried out and the rest are progressing. The building manager states that the tenants claim for additional compensation for loss of quiet enjoyment is not reasonable.

Analysis

I find that no condition inspection report was completed at the outset of the tenancy. Therefore, the landlord has extinguished his right to retain the tenants' security deposit pursuant to section 36(2) of the *Act*. The tenant is entitled to the return of her security deposit within 15 days of providing the landlord with her forwarding address in writing.

I find that the landlord is in breach of section 31 of the *Act* by changing the locks on the storage area and not providing the tenant with access to her belongings in the storage locker. I Order the landlord to provide the tenant with a key to the storage area to take effect immediately.

The tenant did incur costs moving her belongings to Vancouver and due to the state she found the rental unit in on her arrival, the broken verbal agreement she had with the building manager and the continuous battle to get repairs completed, this has forced her to find alternative accommodation. I find she is entitled to recover the additional moving costs she will occur on moving to a new rental unit. I also find that the tenant will incur additional costs for having her mail redirected again by Canada post and she is entitled to recover these costs.

I find the tenant made numerous attempts to contact the building manager about the paint splatters and to have the storage facility made secure and final resorted to purchasing a new latch and paint remover herself. Therefore, I find the tenant is entitled to recover these costs from the landlord. However, as the arrangement with the Bar-B-Q was a private arrangement between two tenants I find that the landlord is not at fault in this instance and the tenant may not recover these costs.

I prefer the evidence of the tenant in regards to her claim that she was promised underground parking in her building. However, the landlord did offer the tenant parking in an adjacent building which may have been inconvenient to the tenant but would have mitigated her loss for having to pay for a parking permit. Therefore I dismiss the tenants claim for a refund of the parking permit.

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The property manager has agreed that the rental unit was not up to standard and services and facilities agreed upon were not provided. He agrees with the tenants claim for a reduction in the rent for June, July and August of \$600.00. The tenant has claimed for the return of May's rent in compensation. However, I find that this claim is excessive and therefore pursuant to section 67 of the *Act* I Order the landlord to reduce the tenants rent for May, June, July and August, 2009 to the total amount of \$800.00.

I find that the tenant has suffered stress, a loss of quiet enjoyment and a considerable amount of inconvenience due to the on-going repairs and faults within the rental unit. Section 32 of the *Act* states, that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make it suitable for occupation by a tenant (my emphasis). The landlords building manager entered into a verbal agreement with the tenant that all the work would be completed prior to her moving into the rental unit and this was not carried out. Pursuant to section 67 of the *Act*, I find the tenant is entitled to compensation to the amount of \$950.00.

Although the tenant has given Notice to end the tenancy by August 31, 2009, she has requested an Order for the landlord to make repairs to the rental unit. The landlord has agreed to do this. Therefore, no order will be issued at this time.

As the tenant has been largely successful with her claim she is entitled to recover \$50.00 for the cost of this application pursuant to section 72(1) of the *Act*. A monetary Order has been issued for the following amount:

Moving costs to new premises	\$1,926.75
Latch and paint remover	\$11.98
Reduction in rent for four months	\$800.00
Compensation	\$950.00
Filing fee	\$50.00
Total amount due to the tenant	\$3,822.73



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Conclusion

I HEREBY FIND in favor of a large part of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$3,822.73. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I further Order that the tenant is absolved of incurring additional move out costs for cleaning the carpets and drapes as per the tenancy agreement.

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: August 04, 2009.

Dispute Resolution Officer