



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC OLC ERP RP LRE PSF RR

Introduction

This hearing deal with an application by the tenant for a monetary order, an order that the landlord comply with the tenancy agreement, an order for emergency and non-emergency repairs, an order that the landlord provide services, an order setting conditions on the landlord's right to enter and an order allowing the tenant to reduce the rent for services agreed upon but not provided. Both parties attended the hearing and had an opportunity to be heard.

At the outset of the hearing the tenant advised that she was no longer living in the rental unit. As a result, the only portions of the tenant's application that are still relevant are those relating to the request for a monetary order.

Issues(s) to be Decided

Is the tenant entitled to a monetary order?

Summary of Background and Evidence

This tenancy began on August 1, 2009 and ended on July 2, 2010. The rent was \$900.00 due in advance on the first day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy.

According to Ms. C, she and her family rented the house because they wanted two floors. This house had an attic, a second floor and of course a ground floor. However, upon moving into the house, the tenant discovered that the second floor and attic had no working outlets and only one light bulb on each floor. The tenant asked the landlord to repair these. Apparently an electrician came to the house but the problem was not fixed. As a result they ran extension cords from the laundry room up to the second floor which provided power for lights and lamps. However, later when they discovered that the baseboard heaters in the house did not work and tried to plug in a small heater to

the extension cord, the circuit kept breaking. As a result, the whole family ended up having to sleep down on the main floor.

Ms. C also testified that when they first moved in, the landlord told them that the neighbouring house utilized the same water well as the residential property. Later, however, the tenant discovered that not only was the neighbouring house using the well but it was also using the same pump. This came to the tenant's attention as a result of BC Hydro "flagging" the residential property as containing a grow-op due to the high consumption rate. Ms. C then contacted BC Hydro to clear up the confusion and then called the landlord to find out what was going on. According to the tenant, the landlord simply said that this type of pump sharing arrangement was "normal". Apparently the neighbours subsequently came over to speak to the tenant about the fact that their water going to be cut off and told the tenant that the pump-sharing arrangement was part of the agreement for purchase and sale they entered into with the landlord when they purchased their home from her.

On a different matter, Ms. C testified that the landlord's son was "unbelievably difficult" to deal with and that he caused her a lot of aggravation and stress by going to her place of employment and talking about her with her boss.

And finally, Ms. C testified that she paid a security deposit of \$900.00 – double what it should have been – because she did not know that a landlord was not legally entitled to request a full month's rent as a security deposit.

For her part, Ms. S testified that she was "never notified of the tenant's complaints" and that it was only in April 2010 that she heard that the tenant was being investigated by BC Hydro. Ms. S agreed that the neighbouring house shares a well with the residential property but denies that they are on the same pump. Ms. S also testified that all electricity worked, no hydro was being used by the neighbours and that Ms. C had brought all of this on herself (although she did not elaborate as to how). Ms. S also testified that the tenant had a dog and that the deposit covered both pet damage and security deposits.

Analysis

The tenant has made a total monetary claim of \$8,951.48 comprised of the following:

- Compensation for loss of use
of upstairs portion of house (\$450.00 X 10 mos) \$4,500.00

• Overpayment of security deposit	\$450.00
• Utilities overpayment (half of total paid)	\$1,951.48
• Stress and aggravation	\$2,050.00

As a general principle, when making a claim of this nature the party making the claim bears the burden of proof on a balance of probabilities both as to liability and quantum. In other words, the claimant must first prove that the landlord is liable for the loss and then, having proved that, must provide evidence justifying the amount claimed.

As a general comment on this matter, I found the materials submitted by both parties to be very scattered and difficult to understand. It is clear that the parties did not get along with each other but what is not clear from the materials submitted is precisely when the tenant brought the issues to the attention of the landlord and when they were or were not resolved. Normally, in cases such as this, the claimant submits a series of written requests to the landlord outlining the problems they are having with the rental unit and thereby establishes a record of events. However, the only letter that has been submitted by the tenant is one dated May 12, 2010 in which the tenant outlines several concerns she has with the rental unit. It is true that the tenant submitted a Certificate of Electrical Inspection report from the BC Safety Authority dated May 19, 2010 but the contents of that report do not, in my view, prove the tenant's claims about the electrical service in the house and the pump share situation. Nowhere in this report is there a statement that there is no electrical service to the upper floors of the house and nowhere does it say that there is an electrical line running to the neighbouring property. The report also does not say that the baseboard heaters are not working in the upper floors.

My comments herein are not intended to imply that I believe the tenant is being untruthful in her submissions, rather, I am assessing the evidence before me and finding that it comes up short in proving the claims made by the tenant.

With respect to the tenant's claim that she suffered emotional distress over this whole matter, I must again find that the tenant has not proved this claim. There has been no medical or psychiatric evidence submitted in support of this claim and while the tenant may well have felt stressed about the problems she was having, it is not enough just to place a dollar amount on a feeling and ask for compensation.

I do find however that the tenant has proved her claim with respect to the security deposit overpayment. The tenancy agreement does not indicate that the overpayment

related to a pet and I therefore find that the landlord must return the overpayment to the tenant.

Conclusion

Based on all of the foregoing, I find that the landlord is liable to repay to the tenant the sum of \$450.00 in security deposit overpayment. I dismiss the balance of the tenant's claims. I therefore order the landlord to pay to the tenant the sum of \$450.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

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*.