



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlords on November 22, 2010. The tenant testifies that he also posted them to the landlord's door. The landlords confirmed receipt of the hearing documents. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on June 15, 2007 and ended on May 02, 2010. Rent at the end of the tenancy was \$2,657.40 and was due on the 1st of each month. The tenant paid a security deposit of \$1,250.00 which was returned to him as ordered at a previous hearing. The Parties have taken part in four previous hearings held in, July, 2009 and February, April and September, 2010.

The tenant seeks a Monetary Order for money owed or compensation for damage or loss. The tenant seeks the return of double his security deposit to the sum of \$1,250.00, he seeks to recover unpaid utilities of \$35.40 from the landlords, he seeks \$1,500.00 for the removal of a facility, he seeks the sum of \$2,657.40 for one months' rent, he seeks \$1,000.00 for a loss of quite enjoyment and he seeks to recover his \$100.00 filing fee for this proceeding.

Security deposit

The tenant testifies that at a previous hearing the landlords applied to keep his security deposit. They were unsuccessful at this hearing and were ordered to return the deposit to the tenant which they duly did on October 04, 2010. The tenant argues that as the landlord did not conduct a move in or a move out condition inspection report that he extinguished his right to keep the security deposit. As the landlord extinguished his right to make a claim to keep it the tenant argues that the security deposit was not returned within 15 days of the landlord receiving his forwarding address in writing and he should be entitled to recover double the security deposit.

The landlord argues that their application to keep the security deposit was for unpaid rent and not damages therefore they were entitled to file an application to keep the deposit even if they were unsuccessful.

Unpaid utilities

The tenant testifies that the landlords forced him to put the utilities in his name when he moved into the rental unit. The landlords owed him a final sum for utilities which had not been dealt with at the previous hearing of \$35.40. The tenant testifies that he had sent the landlords copies of the utility bills prior to filing his application and they did not pay this outstanding amount. The tenant agrees the landlords have now paid this amount.

The landlords testify that they were not given copies of the utilities bills until they received the tenants' application for this hearing. The landlords state as soon as they received the utility bill they sent the tenant a cheque for the outstanding sum of \$35.40.

Removal of a facility

The tenant testifies that he lost the use of the lights at the front of the house. At an earlier hearing held on July 30, 2009 the tenant had applied for monetary compensation for a loss of quiet enjoyment due to the loss of the porch light at the front of the house. The tenant testifies that the landlord did not maintain the property and while the lights worked when the tenant moved into the property after about a year they stopped working. The tenant testifies that he notified the landlord by e-mail each month after February, 2009. Initially the landlord did find a problem with the porch light and his partner discovered that the light was hanging by its wires and not screwed into the frame.

The tenant testifies that the other carriage lights also went out after the porch light shorted out sending a shower of sparks onto the tenant as he attempted to replace the bulb. The tenant had concerns that this could have caused a fire to the property. He states his family suffered as a result of the loss of this facility. They could not see clearly when approaching the front of the house at night, their security at the front of the house was compromised and they could not enjoy any Christmas lights. The tenant feels his rent should be discounted for the 15 months they lost this facility at \$100.00 per month.

The landlords testify that the tenant did inform him about the malfunctioning light. The landlord testifies that when he went to the unit to repair it he found the tenant had wired his Christmas lights into it without approval. The landlord states the tenant also had switched the switches to the outside lights himself without approval and the power line to one of the switches had been clipped and no ground line was attached (Photograph provided in evidence).

The landlords testify that they have had difficulties dealing with the tenant because he is confrontational. The landlord states the tenant would make repairs himself and had no right to tamper with the electrical systems or change the switch boxes to the lights. The landlords suggest it was through the tenants' actions that caused the fault to the lights as he did not use a qualified person to make any repairs. The landlords testify that the tenant did not use the front door to his unit but entered through a side door which did have lights.

The tenant testifies that he did not wire his Christmas lights into the porch light but used a legal plug that plugs into the carriage light socket. The tenant testifies that the landlord gave him

permission to put in the timers switches and sent him an e-mail concerning these switches. (E-mails included in evidence) The tenant argues that it was the pot light in the porch that did not work at first as it was not fitted correctly. This caused all the lights at the front of the house to blow out. The tenant agrees his family used the side door but states the lack of light made it difficult for visitors coming to the front door at night.

One month's free rent

The tenant testifies that the landlord acted unlawfully in renting a single family dwelling to two families. Due to this the tenant had to move from the rental unit as the landlord served him with a One Month Notice to End Tenancy which was upheld at a previous hearing. The tenant testifies that when he moved into his unit he was aware the landlord was going to rent out the basement unit but was not told that he did not have a legal right to do so. The tenant testifies that the reason given on the Notice was that the rental unit must be vacated to comply with an Order of a Federal, British Columbia, regional or municipal governmental authority. The tenant argues that the landlord could only have rented one of the units if he had lived in the other unit. As the landlord did not comply with the City by-laws concerning the rental of the unit and did not notify the tenant of that, the suite was illegal and the tenant states he had to move out and he incurred moving costs, cleaning costs and stress.

The tenant testifies that the landlords then moved their daughter and her day care business into the rental unit. The tenant argues that had the landlords given him a two Month Notice to End Tenancy for their use of the property under s.49 of the *Act* he would have been entitled to compensation equivalent to one month's rent pursuant to s. 51 of the *Act*. The tenant feels he should be compensated an amount equivalent to one month's rent as he states the landlords actions with frequent inspections, e-mail and discussions about the tenant "being happy somewhere else" indicate the landlords plan to occupy the rental unit by their own family members. The tenant refers to the principle of equity and the power granted to the Director to award compensation under s. 7 of the *Act*.

The landlord testifies that they issued the One Month Notice in good faith after receiving an Order from the city to remove the illegal suite. At the previous hearing the One Month Notice was upheld and the tenants are now attempting to reargue that decision. The landlords testify

that when they rented the unit to the tenant they were not aware of the city by-laws that stated that the owner had to live in the other suite.

Loss of Quiet enjoyment

The tenant testifies that for more than a year of his tenancy the landlord never came to inspect the rental unit. After the tenant sought and gained an Order for the landlord to pay utilities for the basement tenant they began to attend the rental unit each month to conduct an inspection which included the landlords taking photographs of their furniture and in their closets in an invasive manner. The tenant states the landlords never inspected the basement tenants' suite and he considers this treatment towards him to be prejudicial and harassment.

The tenant testifies that he has had to chase the landlords on six occasions to pay their share of the utility bills and the tenant has had to file disputes to force the landlords to pay. The tenant claims that this repetition becomes harassment.

The tenant testifies that the downstairs tenants would let his friend put garbage in the yard which would then be removed by the downstairs tenant. The tenant claims there were all kinds of problems with the downstairs tenant such as drug deals, prostitution, homeless people sleeping in the downstairs unit and garden shed, the RCMP coming over to look for fugitives, tire slashing and fire bombing of a truck. The tenant testifies that he complained many times to the landlords verbally but did not pursue these complaints as he wanted to move out. The tenant claims he was afraid for his family.

The landlords dispute the tenants' claims. The landlords testify that all the tenants' claims about drug deals are bogus and inflammatory. The landlord claims the Police have received over 40 telephone calls from the tenant making accusations about the downstairs tenants which are unfounded. The downstairs tenant has a disability and has a licence to use marijuana for pain relief and his visitors to his unit are his friends who visit him to ensure he is alright. The landlords testify that at 11.30 one night they received a telephone call from the tenant about the downstairs tenant having a meth lab. The landlords state they rushed over to the house and found that the smell was a skunk that had sprayed in the area. The landlords testify that on one occasion they did attend the property and pick up garbage from the yard.

Filing fee

The tenant seeks to recover his \$100.00 filing fee from the landlord.

The landlord's state they should not have to reimburse the filing fee to the tenant as his claim for a Monetary Order is unfounded and the utility bill was paid to the tenant upon receipt of the bill in the tenants' application.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for double the security deposit the tenant argues that the landlord did not have a right under the Act to file an application to keep his security deposit as he had not conducted either a Move in or Move out condition inspection of the rental unit. However, the previous application filed by the landlord to keep the security deposit was for unpaid rent not damages to the rental unit. Sections 24(2) and 36(2) of the Act state that a landlords right to claim against the security deposit for damages to residential property is extinguished if the landlord has not conducted the condition inspections with the tenant at the start and end of the tenancy. As the previous application by the landlord to keep the security deposit was for rent it is my decision that he was entitled to file that application and did so within the 15 allowable days after the end of the tenancy. Consequently the tenants' application for the return of double the security deposit is dismissed.

With regard to the tenants claim for unpaid utilities; as these utilities have now been paid by the landlords this section of the tenants claim is dismissed.

With regard to the tenants claim for the removal of a facility; at a previous hearing the tenant applied for monetary compensation for the loss of quiet enjoyment of the rental unit due to the loss of the porch light and at that hearing his claim was dismissed. The tenant has now brought another claim concerning the loss of a facility with regard to having no lights at the front of the house. The landlord argues that this matter was previously decided at the hearing held on July 30, 2009 and the tenant is attempting to reargue this matter. However, I do not find that this matter was previously determined as the matter discussed at the previous hearing concerned a loss of quiet enjoyment and not the loss of a facility and it was concerning just the porch light

and not all the lights at the front of the house. I further find that since that hearing in July, 2009 the problem with the lights at the front of the house became more problematic and the tenant did notify the landlord of these continuing problems.

The landlord argues that the tenant is responsible for the loss of the lights and has provided photographs of switches he claims were replaced or tampered with by the tenant. The landlord's photographs do show two switch boxes however the tenant has denied tampering with these and states the landlord gave him permission to replace them. As I have no corroborating evidence from the landlord to show that the tenant did tamper with the electrical systems which resulted in a loss of lights to the front of the property. It is my decision that the landlords did not comply with section 32 (1)(a) of the *Act* in maintaining the rental unit. The tenant and his family did lose the benefit of the lights when they or their guests approached the house at night because the landlords failed to make repairs in a timely manner after notified by the tenant. Section 7 (1) of the *Act* states that if a landlord does not comply with the *Act*, regulation or tenancy agreement, the non-complying landlord must compensate the tenant for damage or loss that results (my interpretation). The tenant has claimed \$100.00 per month for 15 months for this loss of a facility however, I find this claim to be excessive as the tenant and his family used the side entrance to the property and have not shown that they have experienced any damage or loss to themselves or their property. Therefore, it is my decision that the tenant is entitled to monetary compensation at an amount determined by me to be \$20.00 per month for 15 months to a total sum of **\$300.00** pursuant to s. 67 of the *Act*.

With regards to the tenants claim for one months' rent in compensation for having to move from the rental unit; I have taken into account both Parties arguments in this matter. At a previous hearing the One Month Notice to End Tenancy was determined to be a valid notice and was therefore upheld. However, as the landlord did not inform the tenant that the unit was not a legal suite at the start of the tenancy it is my decision that the tenant is entitled to some compensation from the landlord for having to move from the rental unit as his tenancy could have continued had the landlord not contravened the city Bi-Laws. The tenant seeks an amount equivalent to one months' rent. However this amount is awarded when a Two Month Notice to End Tenancy is issued to serve as compensation to a tenant when a landlord wants to use the rental unit for his own use. It is irrelevant at this time what the landlords decided to do with the rental unit after the tenancy ended.

I have reviewed the tenants documentary evidence that shows his moving costs amounted to \$200.00 and his cleaning costs amounted to \$550.00. As a tenant would be required to clean a unit and potentially the carpets after a tenancy amounting to three years the tenant would have suffered this cost at the end of his tenancy and it was the tenants choice to use a cleaning company and not his own time and labour. However, as the tenant would not have had to move at that time had the landlord not contravened the City bi-laws I find he is entitled to recover his moving costs of **\$200.00** from the landlord pursuant to s. 67 of the *Act*.

With regard to the tenants' claim of \$1,000.00 for a loss of quiet enjoyment, the tenant argues that he was harassed by constant inspections, by having to chase the landlord for his share of the utility bills and having to file for dispute resolution to recover these amounts owed and to dispute the landlord's claims. He claims he suffered a loss of quiet enjoyment due to the downstairs tenant's actions and the landlord's failure to take action against these tenants. The landlords argue that these matters have already been dealt with. However, I find the previous hearings where the tenant claimed a loss of quiet enjoyment the only section which was previously heard was an incident concerning the actions of the downstairs tenants' guests.

I have reviewed the verbal testimony and documentary evidence concerning this section of the tenants claim. I refer both parties to the Residential Tenancy Branch Policy Guidelines #6 which discusses the tenants' right to quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlords actions that rendered the premises unfit for occupation, or the inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlords power to control.

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: entering the rental premises frequently, or without notice or permission; unreasonable and ongoing noise; persecution and intimidation; refusing the tenant access to parts of the rental premises; preventing the tenant from having guests without cause; intentionally removing or restricting services, or failing to pay bills so that services are cut off; forcing or coercing the tenant to sign

an agreement which reduces the tenant's rights; or, allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

A landlord is entitled to conduct monthly inspections of a rental unit as long as they provide written notice to the tenants and the reason for inspection is reasonable. As neither party has specified what the purpose of the inspections were or provided any evidence to show the written notice given to the tenant I am unable to determine if the reason given was reasonable. I further find that the tenants' arguments that he had to chase the landlords for payments for utilities and having to attend constant Dispute Resolution Hearings to settle disputes does not constitute a loss of quiet enjoyment under s.28 of the *Act*. I also find the tenant has not provided sufficient evidence of any illegal actions from the downstairs tenants which the landlords failed to deal with that resulted in a loss of quiet enjoyment. Both parties also agree that the landlord did act immediately when the tenants notified him of his suspicions that the downstairs tenants had a 'meth lab' even though these suspicions were unfounded and the smell had come from a skunk spraying. The tenant also agrees that he did not follow through on his complaints to the landlords as he wanted to move from the rental unit and therefore has not mitigated his loss in this matter. Consequently, it is my decision that the tenants application for a Monetary Order for compensation for a loss of quiet enjoyment is dismissed without leave to reapply.

As the tenant has been partially successful with his claim, but the majority of it is unsuccessful it is my decision that he may recover **\$25.00** from his \$100.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Compensation for the loss of a facility	\$300.00
Subtotal	\$500.00
Portion of the filing fee	\$25.00
Total amount due to the tenant	\$525.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$525.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' 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: March 04, 2011.

Residential Tenancy Branch