



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC PSF AAT LAT RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to Order the Landlord to provide services or facilities required by law, to allow the Tenant and her guests access to or from the unit or site, authorize the Tenant to change the locks to the rental unit, to allow the Tenant to reduce rent for services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to establish a loss under the Act, regulation and/or tenancy agreement?
2. If so, is the Tenant entitled to monetary compensation as a result of that loss?
3. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, is the Tenant entitled to Orders pursuant to sections 30, 62, 65, 70, of the *Residential Tenancy Act*?

Background and Evidence

Background information and evidence was provided during the hearing. The following includes only that which is relevant to this claim.

The Tenant confirmed receipt of the Landlords' evidence and advised she did not serve the Landlords with copies of her evidence.

The parties agreed they entered into a verbal tenancy agreement that began July 30, 2011. Rent is payable on the first of each month in the amount of \$700.00 and on or before July 28, 2011 the Tenant paid \$350.00 as the security deposit. Rent includes the cost of utilities and the use of the washing machine on Sundays. The Tenant is not permitted to use the dryer.

The Tenant affirmed that she is seeking \$700.00 to cover the cost of clothes and blankets she had to throw out because she was prevented from doing laundry and they became mouldy. She claims the Landlord is not providing her access to the washing machine regularly on Sunday's as required by their tenancy agreement so she has fallen behind in laundry and clothes become mouldy as they sit in piles. The Tenant claims the Landlord has also restricted what type of detergent she can use and which clothes she can wash. She said when she first did laundry the Landlord sorted through her clothes saying nothing with zippers can go in the washer and none of her son's clothes can go in the washer because they are too small.

The Tenant confirmed that she began to hand wash her clothes and when the Landlord demanded she stop hand washing clothes she decided to go to a laundry mat. She states that when she told the Landlord she would be using a laundry mat the Landlord agreed to reduce her rent by \$50.00 per month.

The Landlords confirm they instructed the Tenant on the proper use of their washer and use of the proper detergent. They requested that small clothes, such as children's socks, be placed in a laundry bag before going into the wash as they have had problems where a sock plugged the washer which cost a lot of money to get repaired. They deny ever sorting through the Tenant's laundry or restricting her access to Sunday laundry days. The Laundry room door does stay locked at all times until the Tenant knocks on their door to request to do laundry. They deny that the Tenant suffered a loss of \$700.00 for mouldy clothing, as there is no evidence to support such a loss. If anything they believe she let her laundry pile up as there are many Sundays she did not want to do laundry. They also advised the Tenant has told them she did not have the money to get detergent so she was going to do laundry at her mother's place.

The Tenant advised the Landlord controls the heat and refused to turn it on when it became cold. She alleges the female Landlord comes into the rental unit without posting proper notice and has walked in on her son on two occasions who has been home sick. The Tenant is requesting a key to the front gate lock so that emergency workers can gain access to her unit in the event her son becomes ill and parking for her guests. She believes these items were part of her verbal tenancy agreement.

The Landlords advised the Tenant has full unrestricted access to her rental unit and she does not need a key to the front gate for emergency services. The emergency vehicles have full and better access to the property from the back alley as the front street is a four lane roadway with no parking. The Landlords deny entering the rental unit without proper notice. As for the heat it would not be a problem if the Tenant left the windows closed but she seems to open all the windows which allows the heat to escape. The Landlords confirm they control the heating thermostat and stated the heat was turned on as of October 1, 2011.

The Landlords deny that parking was ever discussed as part of the tenancy agreement as the Tenant does not have a car. They were clear that all guests park in the laneway which is where their guests park. They also deny ever agreeing to a reduction in rent. Rent has always been \$700.00 per month and has never been reduced even though the Tenant did not pay full rent for October 2011 and her November 2011 rent remains unpaid.

Analysis

The Tenant confirmed that she did not provide the Landlords with copies of her evidence in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Landlords have not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy;(b) freedom from unreasonable disturbance;(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act provides as follows:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The parties entered into a verbal tenancy agreement which is a breach of section 13 (1) of the Act which stipulates a landlord must prepare every tenancy agreement in writing. Accordingly, I hereby order the Landlords to prepare a written tenancy agreement putting all the terms of the tenancy in writing. This agreement is to be signed by both parties and a copy provided to the Tenant in accordance with the Act.

The parties agreed rent included access to the washing machine on Sundays however the Landlord has not been unlocking the door until the Tenant knocks on the Landlord's door to request to do laundry. I find this method to be a limitation or restriction to the Tenant's access as she is dependent on the Landlord's availability to do laundry instead of having full access on Sundays. Therefore, in accordance with Section 62 of the Act, I Order the Landlord to leave the Laundry room door unlocked every Sunday from 9:00 a.m. to 9:00 p.m. to allow the Tenant unrestricted access to the washing machine.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Therefore, in the presence of disputed verbal testimony I find their to be insufficient evidence to support the Tenant's claims

that guest parking and a key to the front gate were to be included in her tenancy or that her rent would be reduced by \$50.00 per month.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenant has the burden to prove a breach of the Act or a loss occurred during the course of the tenancy. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof. Therefore I dismiss the remainder of the Tenant's claim.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Landlord is Ordered to create a written tenancy agreement, listing all the terms of the tenancy, for both parties to sign and to provide the Tenant a copy.

The Landlord is Ordered to leave the laundry room door unlocked every Sunday from 9:00 a.m. to 9:00 p.m. in order to allow the Tenant uninterrupted access to the washing machine.

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: November 10, 2011.

Residential Tenancy Branch