



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, PSF, AS, RR

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to provide services or facilities required by law / permission to assign or sublet because the landlord's permission has been unreasonably withheld / and permission to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing and gave affirmed testimony.

During the hearing the tenant withdrew the aspect of his application concerning permission to assign or sublet because the landlord's permission has been unreasonably withheld.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began in 2008. Monthly rent is currently \$375.00, and it is paid directly to the landlord by a Provincial Ministry. The tenant testified that a security deposit was collected at the start of tenancy in the amount of what was half the monthly rent at that time. The tenant also testified that he paid deposits on each of 2 separate keys: 1 for the front entrance of the building (\$10.00) and 1 for his room (\$5.00).

Subsequent to the time when this tenancy began, the landlord changed. One of the changes introduced by the new and present landlord has been the installation of a controlled entrance to the building. While tenants previously let themselves into the

building with the key issued to them, tenants must now required ring a bell or buzzer at the front entrance and wait to be let into the building. Not only does the tenant feel aggravated by this change, he testified that the \$10.00 deposit collected for the key to the front entrance to the building has not been returned to him.

The tenant also testified that a bed frame and a functioning fridge were located in his room and included in the rent at the start of tenancy. However, with the passage of time, the bed frame was removed and the fridge ceased functioning.

Further, the tenant testified that his access to a community kitchen in the building had been terminated. The landlord's agents acknowledged that space which was previously used as a community kitchen had been transformed into a nurses' room for the use of health authority personnel. However, the landlord's agents also testified that 2 other kitchen facilities are available in the building for the tenant's use.

In relation to communication, the tenant considers that there is a failure on the part of the landlord to properly inform tenants of various matters which impact on their tenancies. However, the landlord's agents take the position that the tenant does not set out any of his concerns in writing and take them to the attention of the landlord, such that the landlord can be aware of his concerns and be given an opportunity to respond.

Other concerns identified by the tenant fall broadly within the realm of breaches of the right to quiet enjoyment. Alleged breaches include, but are not necessarily limited to, allegations that staff call out his name on occasions when he enters and / or leaves the building; knocking on his door by staff; calls by staff to police or the fire department in relation to unfounded concerns about him; and excessive noise and / or disruptive behaviour on the part of other tenants in the building.

Both parties agree that the tenant is not particularly happy living in the subject building, and that eventual relocation to another building is a preference in the long term.

During the hearing the parties exchanged views on some of the circumstances surrounding various aspects of the dispute and undertook to achieve some resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties led to a partial resolution. Specifically, it was agreed as follows:

- that the landlord will undertake to deliver a bed frame and a functioning fridge to the tenant's room by not later than midnight, February 29, 2012; and
- that at such time as a room becomes available on the floor beneath the floor on which the tenant's room is located, and at such time as that room has been made suitable for a new tenant, the landlord will provide the tenant with the right of first refusal for moving into that room.

Section 27 of the Act addresses **Terminating or restricting services or facilities**, and provides:

27(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on the documentary evidence and testimony of the parties, I find that there is insufficient evidence to support the tenant's application for an order instructing the landlord to provide services or facilities required by law. Accordingly, this aspect of the application is hereby dismissed.

However, as to the aspects of the application which concern an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided /

and compensation for damage or loss under the Act, Regulation or tenancy agreement, I find on a balance of probabilities that the tenant has established entitlement limited to \$100.00. I find that this entitlement arises out of the period of time during which the tenant has not had either a bed frame or a functioning fridge in his unit. The absence of sufficient evidence related to how long the tenant was without these items, and the absence of sufficient evidence of efforts made by the tenant to document his concerns and take them to the attention of the landlord, and the absence of sufficient evidence related to the negative impact the absence of these items have actually had on the tenancy, cumulatively all preclude entitlement to a larger amount of compensation.

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides:

28 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.

Based on the documentary evidence and testimony of the parties, I find that there is insufficient evidence of a breach of the tenant's right to quiet enjoyment. As earlier noted, however, the parties have reached agreement around the tenant's transfer to another room in the foreseeable future. And as previously stated, the parties agree that the building in general does not well suit the tenant's particular lifestyle needs and preferences.

The matter of the \$10.00 deposit for a key to the front entrance of the building was previously referenced here. In that regard, the parties are encouraged to look further into related documentation which may exist and to explore whether the matter can be resolved between them during the tenancy as opposed to at the end of tenancy.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$100.00**. Should it be necessary, this order may be served on the landlord, filed in the 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*.

Dated: February 21, 2012.

Residential Tenancy Branch