



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; for an Order that the Landlord comply with the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with the Notice of Hearing documents by registered mail sent March 23, 2012, to the Landlord's address provided for service on the tenancy agreement. The Tenant provided the tracking numbers for the documents.

The Tenant testified that the Landlord is currently out of the country for a four month period, and that the other landlord noted on the tenancy agreement ("SH") passed away in January 2012. She stated that the Landlord did not give her another contact number for her agent while she was away and simply provided her with a list of contacts for various maintenance issues. The Tenant testified that the Landlord told her to call a plumber, electrician, locksmith or other professional, pay the bill and the Landlord would reimburse her when she returned from her travels.

Based on the affirmed testimony of the Tenant, I find that the Landlord was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Neither the Landlord nor any agent for the Landlord signed into the teleconference and the Hearing continued in the Landlord's absence.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss pursuant to the provisions of Section 67 of the Act?
- Should the Landlord be ordered to comply with the Act, Regulation or tenancy agreement?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy started on January 1, 2012. The tenancy agreement is a fixed term lease, expiring July 1, 2012. Rent is \$950.00 per month and the Tenant paid all of the rent in advance on December 15, 2011, for the term of the tenancy. The Tenant also paid a security deposit in the amount of \$475.00 on December 15, 2011.

The rental unit is a cottage on a rental property that also has a house with a basement suite. The Landlord resides in the main part of the house. In addition to monthly rent, the Landlord required the Tenant to pay \$120.00 for exclusive use of the hot tub for the four months that the Landlord would be away. The Tenant testified that when she signed the lease, the basement suite was vacant. She testified that shortly after she signed the lease and had paid \$120.00 up front for exclusive use of the hot tub, occupants moved into the basement suite. She testified that she reached a new agreement with the Landlord that she would clean the hot tub in exchange for using it and that SH would repay her the \$120.00 right away. She stated that SH passed away in January, 2012, and did not repay her. The Tenant seeks to recover the **\$120.00**.

The Tenant testified that there is a dead bolt on the door to the rental unit which automatically locked one day at the end of January or beginning of February, when the door was closed hard. She stated that she did not have a key to the deadbolt and found herself locked out of the rental unit. The Tenant called the Landlord, who was still in town at that time. The Tenant testified that the Landlord told her that she didn't have a key either and to call the locksmith and to have him call the Landlord when he got to the rental unit so she could provide her Visa number. The Tenant testified that the Landlord did not answer her phone to provide her Visa number, so the Tenant paid the locksmith's bill in the amount of \$89.00. The Tenant stated that she provided the Landlord with the locksmith's invoice and that the Landlord promised to pay her back, but has not. The Tenant seeks a monetary award for the cost of the locksmith's bill in the amount of **\$89.00**.

The Tenant testified that space heaters are the primary source of heat in the rental unit. She stated that when the temperature fell to below 0 degrees outside, mostly in the months of January and February, 2012, it was impossible to heat the rental unit to a comfortable temperature. She stated that she used the stove as a heating source, but also stayed over at a friend's house. The Tenant testified that when she talked to the Landlord about it, the Landlord told her to sleep in a down jacket and purchase more quilts and duvets. The Tenant seeks compensation in the amount of **\$475.00** for loss of heat in the rental unit.

Analysis

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the undisputed testimony of the Tenant and the documentary evidence provided, I find that the Landlord has not complied with the tenancy agreement (exclusive use of the hot tub); and Section 33(5) of the Act (regarding emergency repairs of the lock). I find that the amount claimed for the locksmith's invoice is reasonable.

I also find that the Tenant did not have adequate heat in the rental unit during the winter months. I find that the Tenant suffered a loss as a result of the Landlord's failure to comply with the Act and the tenancy agreement, and I Order the Landlord to pay the Tenant compensation, as follows:

Recover amount paid for exclusive use of hot tub	\$120.00
Cost of emergency locksmith services	\$89.00
Loss of heat for two month period	<u>\$475.00</u>
TOTAL	\$684.00

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$734.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 17, 2012.

Residential Tenancy Branch