



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were also given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This fixed term tenancy began on March 31, 2010, expired February 1, 2012 and then reverted to a month-to-month tenancy. The tenancy ultimately ended on April 10, 2012. Rent in the amount of \$725.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 as well as a pet damage deposit in the amount of \$250.00.

The tenant testified that on March 31, 2012 the landlord had entered the rental unit without the tenant's consent and turned off the breaker switch for the base board heaters in the rental unit and then put up ply-wood over the breaker box to prevent the tenant from opening it. The base board heaters were the only source of heat to the rental unit. The tenant reported the landlord's actions to the fire department, who advised the tenant to contact the electrical inspector. The electrical inspector left a

message for the landlord to remove the ply-wood. The ply-wood remained over the breaker box for about a week.

On April 2, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because the tenant had not paid rent for that month on the 1st of the month. The tenant testified that the rent wasn't paid, the tenant was moving on the 10th of April, and the landlord already had the tenant's security deposit and pet damage deposit. The landlord left a voice message on the tenant's phone stating that if the tenant was not out of the rental unit by the 12th of April, the landlord would move all of the tenant's belongings to the home of the tenant's parents. Then on April 3, 2012 the landlord turned the water off and the tenant had no water for a week. The tenant had to shower at a friend's home or at the home of the tenant's parents.

The tenant further testified to arriving at the rental unit during the tenancy with groceries, folded towels and a winter coat when the landlord met the tenant and accused the tenant of hoarding.

The tenant had shoulder surgery in October, 2011 and the landlord had left a message for the tenant stating that if the tenant didn't clean out the shed by the end of October, 2011 the tenant would be evicted. The tenant could not clean out the shed due to the recent surgery.

The tenant also testified that the landlord reported the tenant to the SPCA, who sent an agent to visit the tenant from another city. The SPCA agent found nothing wrong with the tenant's pet.

The landlord also restricted laundry at the end of September, 2011. The landlord and the tenant shared laundry facilities and on that day, the landlord took all of the tenant's laundry from the washer into the rental unit and dumped it into the bathtub, then told the tenant that the landlord was not rich. A note was subsequently left on the washer stating that the tenant was only permitted to do 2 loads of laundry one day per week. The landlord also refused to let the tenant do any laundry for about a week prior to the tenant moving from the rental unit.

The tenant claims the equivalent of 3 month's rent for January, February and March, 2012 from the landlord for constant harassment and for denying the tenant the tenant's right to quiet enjoyment of the rental unit.

The landlord's agent testified that the rental unit is a basement suite in a house that the landlord and the landlord's agent purchased. At the time of purchase, the tenant was

already a tenant in the basement suite of the house. The landlord's agent was working in Alberta, and the landlord had told the agent that the tenant was not paying rent on time. The landlord also complained about the smell of animal urine and incense coming from the rental unit. The landlord had had a sinus infection which was aggravated by the odours from the rental unit.

The landlord's agent denies that the only source of heat to the rental unit were the base board heaters. The house is heated with gas and the landlord had told the tenant not to use the base board heaters because they used up too much hydro. The landlord was told by the electric company (Fortis) to put a cover on the breaker box.

The landlord's agent further testified that the tenant was doing laundry for clients and kept each client's laundry separate so that some loads were very small which used up a lot of hydro, and hydro is included in the rent.

In March, 2012 the landlords conducted an inspection of the rental unit and the smell of pet urine and deodorizing spray combined were overpowering. During that inspection, the landlord noticed that the tenant's bedroom was waist high with "stuff". The carpets were stained, and after the tenant vacated, the landlord cleaned the carpets but the water that came up was brown. Further, every inch of the rental unit is covered with cob-webs. The walls still need cleaning and the landlord has to replace the stove.

The tenant moved 9 truck-loads of belongings from the rental unit on April 15, 2012 and then returned on April 29, 2012 to pick up another truck load from the shed. The landlord's agent stated that the tenant was asked several times during the tenancy to clean the shed and reduce waste but the tenant refused to cooperate.

The landlord's agent is not aware of the landlord turning off the water to the rental unit; the agent does not know if that is even possible.

The landlord has not yet returned any portion of the security deposit to the tenant, and the landlord intended to keep it but the landlord's agent was advised during the course of the hearing that the *Act* does not permit arbitrarily keeping security deposits or pet damage deposits. The tenant has not yet provided a forwarding address in writing and the parties were explained the provisions of Section 38 of the *Residential Tenancy Act*.

Analysis

The *Residential Tenancy Act* is very clear with respect to landlords providing tenants with the covenant of quiet enjoyment. Specifically, the *Act* states that a tenant is

entitled to quiet enjoyment including rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit and use of common areas free from significant interference. Further, the *Act* prohibits a landlord from entering a rental unit unless the tenant consents or the landlord gives the tenant not more than 30 days and not less than 24 hours written notice which must indicate the date and time of the entry and the reason for entry which must be reasonable. I do not believe that the landlord had the tenant's consent nor did the landlord give the tenant any written notice to enter the tenant's rental unit and put the tenant's laundry in the bathtub. Nor do I accept that the landlord had consent or had given notice to enter the rental unit when the landlord put ply-wood over the breaker box.

The *Act* further prohibits a landlord from terminating or restricting a service or facility unless the tenant is given sufficient notice and rent is reduced accordingly. I have reviewed the tenancy agreement dated October 24, 2011 which states that laundry is included in the rent, but is restricted to 1 day per week and up to 2 full loads at a time. I accept the testimony of the tenant that the landlord prevented the tenant to use the laundry facilities for the last week of the tenancy, and the tenant is entitled to some compensation in that regard.

The landlord did not attend the hearing, but the landlord's agent testified that the agent has no knowledge of the landlord turning off the water, nor whether or not it is even possible. In the absence of any evidence to the contrary, I accept that the landlord did turn off the water, and the water remained turned off from April 3, 2012 until the end of the tenancy on April 10, 2012. Water is a necessary facility in a home, and I find that the tenant is entitled to compensation for the landlord's wrong-doing.

It is clear in the circumstances that the landlord was somewhat frustrated with the habits of the tenant, however the *Act* provides several legal methods for dealing with the situations that the landlord may have encountered, none of which include restricting or removing facilities.

It's important that landlords know that once a tenancy agreement has been entered into, the tenant is entitled to treat the rental unit as the tenant's home. A landlord must also treat the rental unit as the tenant's home, and must observe the tenant's right to privacy. Entering another person's home without their consent is direct infringement of a person's right to privacy.

The tenant has applied for damages due to the landlord's refusal to provide the tenant with the tenant's right to quiet enjoyment. There are different types of damages that can be awarded to a party:

- Aggravated Damages, which are meant “to compensate the wronged party for the loss of benefits that were within the reasonable contemplation of the parties when the contract was made.” (*Warrington v. The Great-West Life Assurance Company*, Vancouver Registry, No. CA 20399, September, 12, 1996, B.C. Court of Appeal);
- Nominal Damages, where a person’s rights have been infringed but the person has not sustained any actual damage;
- Punitive Damages, which are awarded against a party to punish the party.

The *Residential Tenancy Act* does not give me the authority to order Punitive Damages.

In determining whether or not the tenant is entitled to a damage award in these circumstances, I consider the actions of the landlord, who I find restricted services or facilities. Although I cannot find that the tenant was really out-of-pocket for the breaches caused by the landlord, I do find that the landlord had a legal obligation to compensate the tenant for the loss of those services, being water and laundry facilities.

With respect to the tenant’s application for the equivalent of 3 month’s rent for “continuous harassment,” I find that the tenant has not satisfied me that \$2,175.00 is a reasonable amount. Courts have awarded nominal damages at \$1.00 to \$250.00, or in some cases larger where the Court has had difficulty quantifying the amounts.

In this case, I find that the tenant has established a claim in the amount of \$170.00 for loss of water for 7 days and \$25.00 for loss of laundry facilities for the final week of the tenancy. I further find that the tenant has established that the actions of the landlord by entering the rental unit without the tenant’s consent is in breach of the tenancy agreement and the *Residential Tenancy Act*, and the tenant is entitled to a nominal award. The landlord’s agent did not dispute the tenant’s testimony that the landlord “harassed” the tenant on several occasions, and I find that \$50.00 is reasonable in the circumstances. The tenant has not established any entitlement to aggravated damages because the tenant has not shown any mental distress caused by the landlord’s actions.

I leave it to the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$245.00. This order is final and binding on the parties and may be enforced.

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: May 07, 2012.

Residential Tenancy Branch