



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing concerns an application by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy for one (1) room on the third level of a three (3) level townhouse was from September 1, 2011 to February 28, 2012 (mistakenly shown on the tenancy agreement as February 28, 2011). Ultimately, however, the tenancy ended effective March 31, 2012. Monthly rent of \$400.00 was due and payable on the first day of each month, and a security deposit of \$200.00 was collected.

The landlord also lives in the townhouse, however, he has his own bathroom facilities. The tenant shared bathroom facilities with another renter. Kitchen facilities were shared between the landlord and all other renters.

The landlord is not the owner of the townhouse. The townhouse is owned by the landlord's parent(s). The landlord's parent(s) did not reside in the unit during the term of this tenancy except for a limited period beginning towards the end of March 2012.

Effective from approximately November 1, 2011, the tenant relocated from his room on the third level to a room on the first level of the townhouse. This relocation was made as a result of the tenant's dissatisfaction with the landlord's prohibition against visitors to the third level of the townhouse. The landlord described this prohibition as a reflection of his concerns related to security. The landlord's restriction on visitors was more

relaxed in regard to the first level. After relocating, as an alternative to paying a higher rent assessed for the room on the first level, the tenant continued to pay \$400.00 per month in combination with undertaking certain cleaning responsibilities within the townhouse.

While heating was adequate in the tenant's room, the tenant claims that the temperature maintained within common areas of the townhouse was typically inadequate and, accordingly, uncomfortable. The tenant claims that this contributed to a period of ill health during the term of tenancy.

Following the end of tenancy, the tenant filed an application for dispute resolution. In summary, the tenant alleges that by way of imposing restrictions on visitors, the landlord breached the tenant's right to quiet enjoyment; further, the tenant alleges that the landlord's inadequate provision of heat in the common areas of the townhouse was, in effect, a restriction of a service or facility.

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 14 of the Act speaks to **Changes to tenancy agreement**, and provides in part:

14(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Section 6 of the Act speaks to **Enforcing rights and obligations of landlords and tenants**, and provides in part:

6(3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Further, Residential Tenancy Policy Guideline # 8 addresses “Unconscionable and Material Terms.”

Section 27 of the Act speaks to **Terminating or restricting services or facilities**, and provides in part:

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.

Further, Residential Tenancy Policy Guideline # 22 addresses “Termination or Restriction of a Service or Facility.”

Section 28 of the Ac speaks to the **Protection of tenant’s right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 addresses “Right to Quiet Enjoyment.”

Section 7 of the Act speaks to the **Liability for not complying with this Act or a tenancy agreement**, and provides in part:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other’s non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Further, Residential Tenancy Policy Guideline # 5 addresses “Duty to Minimize Loss.”

Based on the documentary evidence which includes, but is not limited to, e-mail exchanges between the parties, in addition to the affirmed testimony of the parties, and in view of the miscellaneous statutory / guideline provisions set out above, the various aspects of the tenant’s claim and my findings around each are set out below.

\$450.00: payment for cleaning (18 hours x \$25.00 per hour). Concerning the period from approximately November 1, 2011 to March 31, 2012, I find that there was an agreement reached between the parties pursuant to which, in exchange for certain cleaning and no change in the amount of monthly rent originally agreed to, the tenant relocated to a room in the townhouse for which monthly rent was higher. I find that this

was a mutual agreement to amend a term of the original tenancy, and that the tenant has therefore failed to meet the burden of proving entitlement to compensation. Accordingly, this aspect of the application is hereby dismissed.

\$2,000.00: *prohibited / restricted visiting*. I note that the written tenancy agreement is silent on any provision concerning visitors. Further, I prefer the tenant's claim that the advertisement for the unit on craigslist made no mention of any restrictions to visiting, and that it was only after signing the tenancy agreement that the tenant became aware of the landlord's specific requirements in this regard.

I note that limits were more restrictive during the first two (2) months of the seven (7) month tenancy. Restrictions eased for the remaining five (5) months of tenancy after the parties reached agreement to amend their tenancy agreement and the tenant relocated.

While it might be argued that the visitor restriction was an unconscionable term of the tenancy agreement, I note there is no evidence of an attempt by the tenant to mitigate his loss by way of an application for dispute resolution during the term of the tenancy.

In the result, however, I find that the visitor restriction was a breach of the tenant's right to quiet enjoyment. Accordingly, I find that the tenant has established entitlement in the amount of \$266.25, which is calculated on the basis of an average of \$1.25 per day for each of the 213 days of tenancy from September 1, 2011 to March 31, 2012.

\$275.00: *increased social tension for lack of visitors*. I find that this claim has been satisfied pursuant to the entitlement established and set out immediately above.

\$2,000.00: *absence of sufficient heat in common areas*. I note that the written tenancy agreement provides that utilities including electricity and gas are included in the rent, and that appliances including the furnace are also included in the rent.

I find on a balance of probabilities that the tenant has proven there was a restriction of a service or facility by way of the inadequate provision of heat in common areas of the townhouse. Further, however, and as previously noted, there is no evidence of the tenant's having undertaken to mitigate his loss by filing an application for dispute resolution during the term of the tenancy.

In summary, I find that the tenant has established entitlement in the amount of \$266.25, which is calculated on the basis of an average of \$1.25 per day for each of the 213 days of tenancy from September 1, 2011 to March 31, 2012.

\$275.00: *inadequate heat during a period of the tenant's sickness*. I find that this claim has been satisfied pursuant to the entitlement established and set out immediately above.

Total entitlement: **\$532.50**

The tenant has not applied to recover the filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$532.50**. 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: June 20, 2012.

Residential Tenancy Branch