



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OPR, MNR, MNSD, FF, SS

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72; and
- an order to be allowed to serve documents or evidence in a different way than required by the *Act* pursuant to section 71.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlords confirmed that the tenant handed the female landlord the tenant's notice to end this tenancy by August 31, 2012 to the female landlord on August 2, 2012. The tenant confirmed that the landlords handed her the 10 Day Notice on August 7, 2012. The landlords confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 16, 2012. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on August 15, 2012. I am satisfied that the parties served one another with the above documents and their evidence packages in accordance with the *Act*.

At the hearing, the parties agreed that the tenant vacated the rental unit by August 31, 2012. As such, both parties withdrew their applications relating to the landlord's 10 Day

Notice. The landlords also withdrew their application for an order to be allowed to serve documents or evidence in a different way than required by the Act. Each of the above portions of the parties' applications are withdrawn.

The landlords revised their requested monetary award from \$1,600.00 to \$800.00 (plus the recovery of their filing fee. They did so as they testified that they were no longer seeking a monetary award for the recovery of rent for September 2012, as the tenant vacated the rental premises before September 1, 2012.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the tenant entitled to recover a portion of her rent for services and facilities the landlords committed to provide as part of her tenancy but failed to provide? Is the tenant entitled to a monetary award for the loss in value of her tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award they requested? Are the landlords entitled to recover the filing fee for their application from the tenant?

Background and Evidence

The tenant first moved into a coach house on this rental property in February 2011. The parties agreed that access to the washer and dryer in that coach house was included in her monthly rent for that tenancy.

On August 15, 2011, the tenant moved from the coach house to the basement suite below the landlords' residence on the same property. The parties agreed that the monthly rent for this periodic tenancy based on an oral agreement between the parties was set at \$750.00 when the tenant first moved into the rental unit, payable on the first of each month. The landlords continue to hold the tenant's \$375.00 security deposit paid on January 16, 2011. The parties agreed that the landlords raised the rent for the basement suite in June 2012 to \$800.00 per month when they purchased and installed a washer and dryer for her use in that suite by May 12, 2012, at the tenant's request.

The terms of the oral tenancy agreement are in dispute. The tenant testified that the landlords told her that her monthly rent would include everything that was included in her previous coach house tenancy. This would include her access to laundry facilities at no extra charge. She said that she was subsequently advised by the landlords that they would not be providing her with a washer or dryer for her basement suite as the renovations to create the basement suite had been too costly to purchase these appliances.

The landlords testified that they clearly advised the tenant before she moved into the basement suite that if she wanted a washer and dryer she would have to purchase one herself. The male landlord testified that the tenant told the landlords that this was alright because she would purchase a washer and dryer herself and have it installed within a few months. The female landlord testified that the tenant was shown each of the appliances the landlord committed to purchase and install in the basement suite, including the stove, the dishwasher and the fridge. She said that the landlords told her that she would have no special parking for this rental unit and would have to purchase her own washer and dryer if she wanted them, but that the landlords would provide a hook-up if she did so.

The landlords' amended application for a monetary award of \$850.00, included the unpaid monthly rent of \$800.00 for August 2012 and \$50.00 for recovery of their filing fee for their application.

The tenant's application for a monetary award of \$1,075.00 included the following:

Item	Amount
Monetary award of \$50.00 per month for 9 months loss of laundry use	\$450.00
Monetary award of \$50.00 per month for 2 months increased rent for June and July 2012 due to Landlord's provision of the washer and dryer that was supposed to have been included in the tenant's rent	100.00
Monetary award for \$50.00 per month for 3 months (June, July and August 2012) for landlord's refusal to pay for Shaw cable box	150.00
Overpayment of rent in January 2012 due to landlord's loss of tenant's original payment	375.00
Total Monetary Award Requested	\$1,075.00

Analysis

There is conflicting evidence with respect to whether the monthly rent for the basement suite for this tenancy was to have included the use of a washer and dryer purchased and installed by the landlord. When disputes arise as to the terms of a tenancy agreement, reference to the written terms of that agreement are of benefit to establish what the landlord was required to provide to the tenant. In this case, there was only an

oral agreement between the parties for both the original tenancy for the coach house and the tenancy for the basement suite. Reference cannot be given to the terms of a previous tenancy for this basement suite, as the landlords renovated their property to accommodate this suite and installed a number of appliances as part of that suite.

Section 12 of the *Act* addresses the standard terms of a tenancy agreement in the following terms:

- 12 *The standard terms are terms of every tenancy agreement*
 (a) whether the tenancy agreement was entered into on or before,
 or after, January 1, 2004, and
 (b) whether or not the tenancy agreement is in writing.

The landlords may be correct in their assertion that the provision of laundry facilities to a basement suite would not constitute a standard term of such a tenancy agreement. However, section 13(1) of the *Act* also requires that “a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.” The landlords clearly did not comply with this requirement in this case and they are at least partially responsible for the lack of clarity as to whether laundry services were in fact to have been included in the \$750.00 in monthly rent that the tenant committed to pay as of August 2011.

In considering the conflicting claims with respect to the provision of laundry in the oral tenancy agreement between the parties, I also find that the tenant did not provide any written evidence to demonstrate that she objected to the terms of the tenancy agreement. Based on the landlord’s written evidence, the tenant did request the installation of a washer and dryer for her rental unit at some point in April or May 2012, leading to the landlords’ purchase and installation of these appliances for her use as of May 12, 2012. As such, I find that the tenant acquiesced in accepting the terms of the oral tenancy agreement as declared by the landlords.

Based on the evidence before me, on a balance of probabilities, I find that the tenant acquiesced to the terms of the oral tenancy agreement as declared by the landlord. Her failure to provide written evidence of her objections to the lack of laundry facilities for her basement tenancy implies that for many months of her tenancy she accepted the landlords’ terms. Over these months she paid her monthly rent of \$750.00 as requested by the landlords without providing any written assertion that she was entitled to a reduction in rent for the landlords’ withdrawal of a service or facility that was to have been included in her tenancy agreement. For this reason, I dismiss the tenant’s application for a monetary award for her loss in value of her tenancy for the landlord’s withdrawal of laundry services that she was supposed to receive as part of her tenancy. I dismiss this element of the tenant’s application without leave to reapply.

The parties are in agreement that the landlords requested an increase in monthly rent of \$50.00 as of June 1, 2012 to reflect the increased utility costs that the landlords would incur as a result of their provision of a washer and dryer for the basement tenant. Once more the landlords' failure to commit the terms of this increased rent into writing is of concern. The landlords provided oral and written evidence that they had provided electrical wiring to enable the tenant to purchase and install at her own expense a washer and dryer for this rental suite. However, they did not enter any evidence that they advised the tenant that if she did choose to purchase and install her own washer and dryer, she would also have to pay higher rent for the increased utility charges they would incur. Who eventually paid for the washer and dryer has little bearing on who was to pay for the increased utility charges to be incurred if a washer and dryer were in fact in operation. Based on the evidence before me, I find that the oral agreement between the parties as described by the landlords provided the tenant with no warning that her monthly rent would increase if a washer and dryer were in operation in her suite. Under these circumstances, I find that the landlords' increase in the monthly rent for this rental unit for "extra utilities costs" was not done in accordance with the *Act*. There is a process whereby a landlord can seek an additional rent increase, one that was not followed by the landlords in this case. As such, I issue a monetary award in the tenant's favour in the amount of \$100.00 for rent that she overpaid in June and July 2012.

Both parties agreed that the tenant did not pay any rent for August 2012. As I find that the correct monthly rent for this tenancy remained \$750.00 throughout the course of this tenancy, I find that the landlord is entitled to a monetary award of \$750.00 for unpaid rent for August 2012.

I have also considered the tenant's application for a monetary award for the landlords' refusal to pay for the Shaw cable box of her choice. The landlords testified that they never withdrew cable service to the tenant. Rather, they said they only committed to pay for the basic cable service and not an added feature cable box that became necessary if customers wished to receive enhanced service when the cable system upgraded during this tenancy. On this point, I found the tenant's evidence inadequate and confusing. She provided no evidence to demonstrate that she incurred any actual losses resulting from the landlords' alleged actions. I dismiss the tenant's application for a monetary award for this item without leave to reapply.

The tenant also applied for a monetary award to recover a rental payment she made in January 2012 for one-half month's rent. She testified that she placed her original rental cash payment for January 2012 in an envelope in a watering can as per an

arrangement she had with the landlords. The landlords denied any such arrangement had been agreed upon, and provided oral and written evidence that a cash payment placed in a publicly accessible location was not a prudent way to pay one's rent. They testified that they agreed to absorb half of the cost of this mistake because it was Christmas and they wanted to be charitable to the tenant who would likely have had difficulty in paying the rent she maintained went missing at that time of year. The tenant's written evidence in this regard was limited to her bank statement showing that she did take money out of her bank account on December 19 and 22, 2011.

While I have given the tenant's application for a monetary award relating to her payment of rent for January 2012 careful consideration, I do not find that the landlords have been in any way unreasonable in their agreement to share the financial impact of the tenant's claim that she paid her rent in cash by placing it in a publicly accessible hiding place. Tenants are responsible for ensuring that rent payments, especially cash payments, are received by their landlords. I dismiss the tenant's claim for this portion of her requested monetary award without leave to reapply as I see no merit whatsoever in her claim in this regard.

As the landlords were successful in their application, I allow the landlords' application to recover their filing fee from the tenant. I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Conclusion

The tenant's application to cancel the landlord's 10 Day Notice and the landlords' application for an Order of Possession are withdrawn. The landlords' application to serve documents in a way other than that prescribed under the *Act* is also withdrawn.

I issue a monetary Order in the landlords' favour under the following terms:

Item	Amount
Unpaid Rent August 2012	\$750.00
Monetary award of \$50.00 per month for 2 months increased rent for June and July 2012 due to Landlord's provision of the washer and dryer that was supposed to have been included in the tenant's rent	-100.00
Less Security Deposit	-375.00
Recovery of Landlords' Filing Fee	50.00
Total Monetary Order	\$325.00

The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As per the above terms, the landlords are authorized to retain the tenant's security deposit in its entirety in partial satisfaction of the monetary award issued in this decision. I also order that the correct monthly rent remained \$750.00 for the duration of this tenancy. With the exception of the monetary award obtained by the tenant for the overpayment of rent for June and July 2012, I dismiss the remainder of the tenant's application for a monetary award without leave to reapply.

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: September 17, 2012

Residential Tenancy Branch