



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. The Landlord did not submit evidence in response to the Tenant's application.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be issued a Monetary Order?

Background and Evidence

The parties agreed that the Tenant has occupied the rental unit since November 1, 2010 and has entered into subsequent tenancy agreements with the last one beginning February 1, 2012. As per the February 1, 2012 tenancy, rent was payable in the amount of \$850.00 on the first of each month and the Tenant's security deposit of

\$550.00 was carried forward from the first tenancy agreement. The Tenant vacated the property by August 31, 2012 and has been returned the full security deposit.

The Tenant submitted evidence in support of her claim which included, among other things, copies of: the most recent tenancy agreement, e-mail communications between the Tenant and Agent, photos of clothing and bedding, and a June 29, 2012 letter written to the Agent from the Tenant.

The Tenant advised that she is seeking \$2,431.80 which is comprised of \$681.80 for damaged clothing plus \$1,750.00 as compensation for having to live with a “non-functioning laundry machine for the last five months of her tenancy.

The Tenant stated that she first noticed stains on her clothing in February 2012 and after several conversations, both verbal and e-mail, with the Agent, a repair person attended at the end of April 2012. The repair person told her it would cost up to \$400.00 to repair the machine and that she should first try a different type of laundry soap. She switched soaps and the stains continued to appear.

The Tenant argued that the Landlord told her they would purchase a new machine only if the Landlord was allowed to wash clothes up to 30 loads to see if they would get stained.

The Landlord confirmed that the Tenant first told her that the dryer machine was staining her clothes. She sent someone to fix the dryer in the stacking washer and dryer, which cost \$89.60. The Tenant complained later that it was the washer causing the stains. The Landlord stated the Tenant was making this up because this was a new building and the laundry machines were new.

The Landlord told the Tenant that she would test the machine and if her clothes were stained then she would purchase a new machine. The Landlord did one load of sheets and they were not stained so she told the Tenant she would need to do several loads to see if they were stained but the Tenant refused to allow the Landlord access to do several loads of laundry.

The Tenant confirmed that she continued to use the machine after knowing it was causing her light colored and whites to stain. She argued that she was very busy and could not go out to a laundry mat to do her laundry. When asked why she did not seek a remedy through the *Residential Tenancy Branch* sooner the Tenant advised that she had contacted the *Residential Tenancy Branch* and was told to put her complaints to the Landlord in writing. She wrote the Landlord in June 2012 after which the Landlord told

her they would purchase a new machine. Then, after the Agent washed a load of laundry, she said the Landlord was not going to buy a new machine. It was at this time that she decided to end her tenancy and wait to file her claim.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case I find there is evidence to support that the stacking washer and dryer was not operating correctly and was staining the Tenant's clothes. Instead of having the repair person attend to assess the machine again the Landlord's Agent wanted to disrupt the Tenant's quiet enjoyment and wash up to 30 loads of laundry to determine if the machine was going to cause another stain, which I find to be unreasonable.

The tenancy agreement included laundry; therefore, it was the Landlord's responsibility to ensure the machines were operating properly. That being said, the Tenant was required to mitigate or minimize her loss. Continuing to use a machine that damaged her clothing does not minimize her loss; rather, it increased the Tenant's loss. Accordingly, I find there to be insufficient evidence to meet the test for damage or loss as listed above and I dismiss the Tenant's claim of \$1,750.00 for reduced services of having a washer/dryer that was "non-functioning" and \$681.80 for damaged clothes.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlord failed to provide machines that were working properly and that the Tenant was instructed, by the repair person, to wash another load of laundry with a new type of detergent, which caused her to suffer damage to one more load of laundry. Therefore, I find the Tenant is entitled to nominal damages in the amount of **\$75.00**.

The Tenant has been partially successful with her claim; therefore, I award partial recovery of her filing fee in the amount of **\$10.00**.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$85.00** (\$75.00 + \$10.00). This Order is legally binding and must be served upon the Landlord and/or the Agent. In the event that the Landlord and Agent do not comply with this Order it may be filed with the Province of British Columbia 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: November 19, 2012.

Residential Tenancy Branch