



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss.

Both parties attended the hearing in person and gave testimony. Both parties have confirmed receipt of the notice of hearing package. The Landlord has confirmed receipt of the Tenant's evidence package and has submitted no documentary evidence in response.

The hearing was adjourned due to lack of time from June 4, 2013 to July 24, 2013 for a continuation where both parties attended the hearing in person.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that the Tenancy ended on November 30, 2012 when the Tenant vacated the rental unit. Both parties also agreed that there was a signed tenancy agreement, but neither party has submitted a copy. It was also agreed by both parties that no condition inspection report for the move-in or the move-out were completed.

The Tenants seek a monetary order for \$8,394.83. This consists of the loss of quiet enjoyment for \$800.00, the loss of use of the premises (\$558.35) and the loss of access to common grounds and facilities (\$96.32), compensation for higher than average hydro bills (\$580.00), compensation for cleaning of the rental unit (\$556.00) and compensation for a request in recovery of rent for a lowered value for the rental (\$5,804.16).

The Tenant states that these claims are an amount which she has deemed as fair based upon a breakdown of her monthly rent. "Breakdown of Rent"

In order of importance

- 1) \$300.00 smoke detector absolutely necessary-required by law.
- 2) \$100.00 proper working doors&locks 60/40 split front&back-right ot security& to be safe.
- 3) \$100.00 clean acceptable living conditions=including no mold, mucus, or blood on walls-see pictures.
- 4) \$90.00 main bathroom.
- 5) \$70.00 kitchen sink/faucet/drain/basis plumbing.
- 6) \$70.00 fridge.
- 7) \$70.00 washer (\$4.00 a load at the laundry mat).
- 8) \$60.00 oven/stove and self-cleaning function on oven.
- 9) \$10.00 self-cleaning function on oven doesn't work.
- 10)\$60.00 2 bedrooms (not necessary-doesn't prevent us from "living")
- 11)\$50.00 quiet enjoyment.
- 12)\$50.00 living/dining area(not necessary-doesn't prevent us from living)
- 13)\$40.00 window coverings/privacy(very important as neighbours can see directly into both windows)
- 14)\$50.00 underground parking (not necessary-can park on street/doesn't prevent us from "living")
- 15)\$40.00 en-suite bathroom(we are mother and son so privacy is big in our home)
- 16)\$40.00 dryer (not necessary-we both hand all of our clothes to dry-doesn't prevent us from "living")
- 17)\$25.00 dishwasher (not necessary- we wash most out dishes by hand-doesn't prevent us from "living")
- 18)\$25.00 pool/gym and all common ground facilities (not necessary- doesn't prevent us from "living")

The Tenants state that due to harassment/a loss of quiet enjoyment by the Landlord between August of 2011 and November of 2012, she seeks \$800.00 which consists of \$50.00 per month for 16 months for the loss of quiet enjoyment. The Tenants state that the loss of quiet enjoyment was lost because of harassment from the Landlord, the Landlord's refusal to hire a qualified repair person and from the "leaky condo construction" repair work.

The Tenants also state that they suffered harassment due to the Landlord's repairman's interactions with the Tenant. The Tenant relies on a letter dated March 23, 2012 that she sent to the Landlord complaining of her treatment by the Landlord's repairman. The Landlord disputes that a letter was received.

The Tenants also state that from December of 2011 to April of 2012 there were extensive "leaky condo construction" which made them suffer from loss of sleep because of early morning construction noises daily and having no window coverings. The Landlord confirmed that construction took place, but that they had no control over the noises. The Landlord states that the Tenants suffered no loss of use of the rental unit during this period.

The Tenants state that there was a leak from a burst pipe in another unit and that they had to suffer during a 4 month duration of humidifier fans and remediation construction.

The Tenants also state that they suffered a higher than average hydro bill of \$580.00. The Tenants state that there was a hole/gap in the doorways which they believe that they suffered a 44% loss of heat because they could feel cold air from these areas. The Landlord disputes this claim stating that the Tenant's invoices do not support the monetary claim. The Landlord has conceded a doorway was askew, but that the Tenant has not proven any losses. The Tenant states this monetary claim is based upon copies of hydro bills, information printed from BC Hydro's website regarding Hydro&Heat, costs, health&comfort, environmental considerations.

The Tenants seek \$556.00 of compensation for cleaning that was required at the beginning of the tenancy. Both parties confirmed that the Landlord was contacted at the beginning of the tenancy over the cleaning. Both parties agreed that the Landlord reimbursed the Tenant \$75.00 for 3 hours of cleaning at \$25.00 per hour. The Tenant states that the cleaning was carried out by herself, but states that a professional cleaner would charge \$20.00 per hour for the 19.88 hours of cleaning that she performed. The Tenant states this is based upon the lowest verbal quote that she was given on the telephone.

The Tenants state that there was a loss of access to the common areas of the rental property (swimming pool and gym) because the Landlord failed to provide any keys to access the facilities. The Tenant seeks compensation of \$96.32 because this is the

equivalent to two monthly passes to the local recreational facility. The Tenants confirmed in their direct testimony that no such passes were purchased.

The Tenants also seek compensation \$4,665.77 for a reduction in rent to reflect the lowered value of the rental unit during the tenancy. The Tenant states that they suffered a loss because of emergency repairs and regular repairs to the rental unit. The Tenant states that there was restricted use of the apartment which included the lack of a smoke detector, problems with the kitchen sink, drain, faucet, oven. The Tenants also state that they suffered a loss of safety and clean living environment. The Tenants state that there was no smoke detector in the rental unit. The Landlord disputes this stating that a smoke detector was installed in August of 2011. The Tenants state that after the installation that the smoke detector was non-functioning. The rental unit was provided at the beginning of the tenancy in a dirty condition, that there was black mold present in the main bedroom and on the 2nd bedroom windows. The Tenants state that they lost the use of the oven for a 7 month period, lost the use of the self-cleaning function on the oven for 16 months, that there were 4 missing blinds in the rental unit. The Landlord disputes this stating that there were blinds. The Tenant amended this stating that there was 2 sets of missing blinds and 2 sets of blinds missing several slats. Both parties agreed that the door to the deck was "askew" for the term of the tenancy and that it was very difficult to open and lock. The Tenants state that the main toilet was not functioning properly for a total of 4 months over two occasions and that there was a leak/flood from the rental unit above for approximately 11 days of inconvenience.

The Landlord states that the Tenant's utility invoices do not match the claim filed by the Tenant. The Landlord disputes the Tenant's amounts stating that the monetary claim is not proven as there are no receipts/invoices for any costs. The Landlord has made no other comment concerning the Tenant's claims.

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.

The Tenants rely on generic research regarding heat loss from BC Hydro's website and Equal payment plan bills. The Tenant has provided no specific details of heat loss or the cost relating to her tenancy. The Landlord has disputed this claim stating that the Tenant has failed to establish any actual losses. The Tenants have failed to provide sufficient evidence of loss regarding their monetary claim. I find that the Tenants have failed to establish a monetary claim for the amount applied for.

I accept that the Tenant has proven that a minimal inconvenience took place based upon the evidence, but such an inconvenience without any actual monetary losses do not entitle them to compensation. The Tenants have failed to provide sufficient evidence to satisfy me of an actual amount required to compensate the Tenants regarding the losses as the Tenant has stated that no actual expenses have been incurred. The Tenants rely on "what they feel is appropriate". However, in these circumstances where a minimal inconvenience has been proven, but without any evidence to support the actual claim of an actual amount, I find that the Tenant is entitled to a nominal award of \$556.00 for the approximate 20 hours of cleaning that was required at the beginning of the tenancy.

The Tenant is granted a monetary order for \$556.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$556.00

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: August 2, 2013

Residential Tenancy Branch

