



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RR, SS, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; to reduce the rent for services, facilities, or repairs agreed upon but not provided; for authority to serve documents in an alternate manner; and to recover the filing fee from the Landlord for the cost of filing this application. At the outset of the hearing the Tenant withdrew the application for authority to serve documents in an alternate manner.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being unable to use the dishwasher for a portion of the tenancy; for inadequate heat in the rental unit; and for moving costs?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on February 25, 2013; that it ended on August 31, 2013; and that the Tenant was required to pay monthly rent of \$1,995.00.

The Tenant is seeking compensation, in the amount of \$600.00, for being without a fully functional dishwasher. The Tenant stated that the dishwasher would cycle but that it would not properly clean the dishes; that she would have to wash the dishes by hand after they had been in the dishwasher; that she first reported the problem to the Landlord in the last week of February or the first week of March; that she verbally reported the problem on many occasions; and that it was repaired sometime in July of 2013.

The Landlord stated that he did not receive a report of a problem with the dishwasher until he received an email from the Tenant, dated May 04, 2013. A copy of this email was submitted in evidence, in which the Tenant declares there is a problem with the dishwasher and she outlines the nature of the problem.

The Tenant submitted an email dated May 05, 2013 in which the Landlord asks whether the dishes are greasy because of the settings or the type of detergent, and he indicates that he would like to inspect the dishwasher.

The Landlord stated that there was delay in inspecting the dishwasher because the Tenant would not allow him into the unit. He stated that he arranged to have a technician inspect the dishwasher on June 14, 2013; that the technician needed to order a part for the dishwasher; and that the part was installed on, or about, July 10, 2013.

The Tenant is seeking compensation, in the amount of \$400.00, for inadequate heat in the rental unit. The Landlord and the Tenant agree that the rental unit was heated with forced air heating; that the Tenant did not have access to a thermostat so she could not personally control the temperature in her rental unit; that the Tenant initially reported the concern with the heat to the Landlord shortly after the tenancy began; that the Tenant subsequently reported her concerns about the heat to the Landlord on several occasions; and that the Landlord attempted to address those concerns by providing the Tenant with two space heaters.

The Tenant stated that the rental unit was usually too cold; that it was sometimes so cold that she and her guests would wear coats or use the oven for supplementary heat; that if she asked to have the heat turned up it was excessively warm; that she could not use both of the space heaters at the same time or the breaker would trip; that she did not have access to the electrical panel so she could not reset the breaker if it tripped; that the breaker tripped at least six or seven times; that the heater would only heat a small area; and that she did not feel safe using the space heater while she was sleeping or when she was not home.

The Landlord stated that the space heaters did trip the breaker on one or two occasions; that the electrical panel was upgraded; and that he received no further reports of a tripped breaker after the upgrade.

The Agent for the Landlord stated that the breaker was tripped on two occasions and that he reset the breaker on both occasions; that he upgraded the electrical panel; and that he received no further reports of a tripped breaker after the upgrade.

The Tenant is seeking compensation, in the amount of \$979.95, for the cost of moving. The Tenant contends that she had to move out of the rental unit because people were smoking inside other units in the residential complex; that the smoke was drifting into her rental unit; that the smoke was damaging her health; that prior to the start of the tenancy she was told the other occupants were only permitted to smoke outside; that the matter was reported to the Landlord on several occasions but he did not seem able to control it; that she was frequently disturbed by noise from the other occupants; that prior to the start of the tenancy the Landlord told her there were only two other suites in the residential complex, but there are actually three other suites; and because of the inconveniences she was experiencing with the heat and the dishwasher.

The Landlord stated that smoking is not allowed in the rental units; that he has never noticed a smell of smoke in any of the rental units; that he does not believe that other occupants are smoking in their rental units; that he did observe some guests smoking in one of the units on one occasion and they left the premises at the request of the Landlord; that he believes it is smoke from people smoking outside that is bothering the Tenant; that smoke from the Agent for the Landlord's rental unit could not be infiltrating the Tenant's unit even if he was smoking inside, as the venting system does not connect the two units; that he has spoken with the other occupants about the Tenant's concern with noise and smoking and he has been unable to corroborate her concerns; and that he did not misrepresent the number of suites in the complex.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant has submitted insufficient evidence to show that she verbally reported a problem with the dishwasher to the Landlord prior to May 04, 2013. I favour the Landlord's testimony that it was not reported prior to the email dated May 04, 2013 over the Tenant's testimony that it was verbally reported many times prior to that email. I find that the emails submitted in evidence are more consistent with the version of events provided by the Landlord. In my view, the Landlord's prompt reply to the email dated May 04, 2013 indicates a willingness to respond to a report of a problem. In addition, the questions the Landlord asks in the email dated May 05, 2013 are questions a landlord would typically ask upon first receiving a report of a problem, rather than one that has known of the problem for many months.

I find that the Landlord had an obligation to inspect and/or repair the dishwasher in a timely manner after May 04, 2013. I do not accept the Landlord's testimony that there was a delay in repairing the unit because the Tenant did not readily provide him access to the rental unit. This conclusion was based, in part, on the email dated May 11, 2013, in which the Tenant suggested that the Landlord could access the rental unit on the next Tuesday, for the purposes of installing a heater. The conclusion was also based, in part, on section 29 of the *Act*, which authorizes a Landlord to enter a rental unit with proper notice for the purposes of completing repairs.

I therefore find that the Tenant is entitled to compensation for being without a dishwasher for the period between May 04, 2013 and July 10, 2013, which is approximately 9.5 weeks. Although a portion of this delay related to the need to order a replacement part, which was not the fault of the Landlord, it does not negate the fact that the Tenant was without the use of a functional dishwasher during this period, through no fault of her own.

As the dishwasher was an appliance for which the Tenant paid rent, I find that her rent should be reduced by \$190.00 for the period that she did not have a fully functional dishwasher. I base this award on my subjective determination that the absence of a dishwasher reduced the value of this tenancy by approximately \$20.00 per week.

I find that a tenant who rents a rental unit should be able to control the temperature in the rental unit and should not need to rely on a third party to adjust the temperature. I find that relying on a third party to adjust the temperature is a significant inconvenience, given that the third party may not be available to adjust the temperature when the tenant is cold or hot.

While I accept that the Landlord attempted to address the Tenant's concern by providing two space heaters, I find that this resolution was not ideal. I find that using a space heater is an inconvenience, because it does not uniformly heat a living space and because many people are not comfortable leaving it on when they are sleeping or away from home.

I find that the Tenant has submitted insufficient evidence to show that she could not use both space heaters at the same time after the Landlord upgraded the electrical panel. In reaching this conclusion I was influenced, in part, by the absence of evidence that corroborates her testimony that the breaker tripped at least six or seven times or that refutes the Landlord's and the Agent for the Landlord's testimony that it only tripped on two occasions.

In reaching this conclusion I was also influenced, in part, by the email dated April 02, 2013. In this email the Tenant explains why she feels the space heaters are inadequate, but she does not mention that she cannot use them both at once due to an electrical issue. In my view, it is likely that she would have mentioned this problem if it were an issue she was experiencing.

I find that the inability to control the temperature in the rental unit reduced the value of this tenancy by at least \$100.00 per month for the colder months of March and April; and at least \$50.00 for May, June, July, and August, for a total of \$400.00. I would have awarded significantly greater compensation to the Tenant if the Landlord had not responded to the Tenant's concerns by providing her with space heaters.

Section 67 of the *Act* authorizes me to award compensation if a tenant suffers a loss as a result of a landlord failing to comply with the *Act*. This could include compensating a tenant for the loss of the quiet enjoyment of a rental unit as a result of disturbances caused by other occupants of the residential complex if the landlord has the ability to control the behaviour of the other occupants and the landlord stands idly by while the occupants disturb the tenant. I specifically note that the Tenant has not sought compensation for the loss of the quiet enjoyment of her rental unit in relation to noise and smoke. I therefore have not made a determination in that regard.

Section 7(2) of the *Act* requires a tenant who is seeking compensation for damages to do whatever is reasonable to minimize the damage. I find that the Tenant should have filed an Application for Dispute Resolution in which she sought a resolution to the disturbances she was experiencing with the other occupants of the complex before she elected to vacate the rental unit. Had she taken such action it is possible she would not have incurred the costs of moving. While a tenant has every right to end a tenancy if the tenant does not find the accommodations suitable, a tenant is generally not entitled to compensation for the cost of moving unless the tenant can establish there was no alternative. In these circumstances I find that the Tenant made the decision to end the tenancy before attempting to address her concerns by filing an Application for Dispute Resolution. I therefore dismiss the Tenant's claim for moving costs.

In addition to establishing that an applicant has suffered a loss, an applicant must also accurately establish the amount of the loss whenever compensation is sought. Even if I did find that the Tenant was entitled to compensation for moving, I would have to dismiss the claim for moving costs as the Tenant has failed to establish the true cost of moving. In reaching this conclusion, I was strongly influenced by the absence of any evidence, such as a receipt, that corroborates the Tenant's claim that it cost her \$979.75 to move.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Landlord must pay \$50.00 to the Tenant in compensation for the fee she paid to file this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$645.00 and I grant a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: September 10, 2013

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca