



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

LAT; LRE; MNDC; MNSD; OLC; RR; FF; O

Introduction

This is the Tenants' application for an Order authorizing the Tenants to change the locks to the rental unit; an Order suspending or setting conditions on the Landlord's right to enter the rental unit; compensation for damage or loss under the Act, Regulation or tenancy agreement; return of the security deposit; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; and "other" relief; a reduction in rent for repairs, services or facilities agreed upon by not provided; "other" relief; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenants' first package of documentary evidence were mailed to the Landlord, by registered mail, sent August 1, 2013. The Tenants also served the Landlord with a second evidence package. The Tenant ZD stated that it was hand delivered to the Landlord on August 29, 2013. The Landlord acknowledged receipt of the second package on August 30, 2013.

The Landlord testified that he provided the Tenants with copies of his documentary evidence on August 28, 2013.

Preliminary Matters

The Tenants' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they are seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenants' application is dismissed.

The tenancy ended on August 31, 2013, and therefore ZD stated that the Tenants were only seeking compensation for damage or loss under the Act, regulation or tenancy agreement, return of the security deposit, and to recover the cost of the filing fee from the Landlord. The remainder of the Tenants' application was withdrawn.

Issues to be Decided

- Are the Tenants entitled to compensation for loss of quiet enjoyment, return of an uncashed cheque, compensation for advertising the rental unit, and overpayment of hydro charges?
- Are the Tenants entitled to return of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This was a fixed term one year lease which began on September 1, 2012 and ended on August 31, 2013. Monthly rent was \$1,800.00, due on the first day of each month. A security deposit in the amount of \$900.00 was paid at the beginning of the tenancy. Hydro bills were in the name of the Tenants, who were required to collect 1/3 of the hydro bill from the downstairs occupants.

ZD gave the following testimony:

ZD testified that the Tenants moved out of the rental property on August 19, 2013. She stated that the Landlord was unreasonable about requiring access to the rental unit in order to show it to potential occupants. ZD testified that she originally allowed access on the basis of a phone call, but that the requests for access became too often and on very short notice, so she required the Landlord to provide notice by e-mail. She stated that the Landlord showed the rental unit every day from mid July to mid August and that towards the end of the tenancy, the Landlord wanted access for 5 hours at a time. The Tenants request compensation in the amount of \$2,700.00 for loss of peaceful enjoyment, which is the amount they paid in rent for July and August:

July rent paid	\$1,800.00
August rent paid	<u>\$900.00</u>
	\$2,700.00

ZD stated that the Landlord had an uncashed cheque of hers in the amount of \$600.00, which she wants returned.

ZD testified that the Landlord said he would pay \$100.00 to the Tenants if they advertised the rental unit for rent, but he has not paid them. She stated that the Tenants placed 6 ads on-line and that there were 4 people who came to see the rental unit on August 3, 2013, 3 of which were responding to the Tenant's ads. ZD stated that the Landlord admitted to offering \$100.00 in his own documentary evidence.

ZD stated that the Tenants were originally seeking \$753.09 for the non-payment of the downstairs occupants' share of utilities, but since filing the Application, the occupants have paid most of their share. The Tenants provided copies of bills and calculate that the downstairs occupants now owe them only \$41.00.

The Landlord gave the following testimony:

The Landlord stated that he only showed the rental unit three times in July and three times in August, one of which was an open house on August 3, 2013, from 11:00 to 4:00.

The Landlord stated that he attempted to cash the \$600.00 cheque, which was part of a rent payment, but the bank refused it. He testified that he returned the cheque to the Tenant on July 3, 2013.

The Landlord testified that he offered to pay the Tenants \$100.00 if they found a new tenant, but that the new occupant was not found by the Tenants' ads.

The Landlord submitted that the Tenants had a contract with the downstairs occupant for payment of hydro bills and therefore it had nothing to do with the Landlord.

The Landlord indicated that he wanted to make a claim against the security deposit, but that he did not have the Tenants' forwarding address. ZD provided a forwarding address during the Hearing and the Landlord wrote it down.

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[my emphasis added]

I find that the Tenants applied for return of the security deposit before the tenancy ended and before the date the Landlord received the Tenants' forwarding address. Therefore, I advised the parties that I made a finding that the Tenants provided their forwarding address on the day of the Hearing (September 6, 2013) and I made an **Order that the Landlord has 15 days from September 6, 2013, to comply with Section 38(1)(b) of the Act.** If the Landlord does not comply, the Tenants are at liberty to file another Application with respect to the security deposit. This portion of the Tenants' application is **dismissed with leave to reapply.**

Section 62(1) of the Act provides that the director has authority to determine matters that arise under the Act or a tenancy agreement. I find that the Tenants' application for compensation in the amount of \$100.00 for placing ads does not fall within the jurisdiction of the director and therefore this portion of their application is **dismissed.**

The Tenant seeks return of her cheque in the amount of \$600.00. The Landlord stated that he has already returned the Tenant's cheque. I find it probable that the cheque has been lost, however I made an **Order that, should the Landlord find the cheque, he must not cash it and must return it to the Tenant.**

Residential Tenancy Policy Guideline 1 provides that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the regulation. Terms that are unconscionable are not enforceable. If the other occupants under a different tenancy agreement do not pay their share the tenant may claim against the landlord for the other occupants' share of the unpaid utility bills. The Tenants provided documentary evidence to support their claim in the amount of **\$41.00** and therefore I allow this portion of the Tenants' claim.

The Tenants have claimed for damage or loss under the Act and therefore they have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Landlord pay for the loss requires the Tenants to satisfy four different 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 Landlord in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The parties disagreed with respect to the number of times that the Landlord required access to the rental unit in order to show it to potential new tenants. The Tenants have the burden of proving their claim. I find that, in the absence of additional documentary evidence or witness testimony adding evidentiary weight to support their stated position, the Tenants have failed to meet the requirements of the test set out above. In any event, an award of total recovery of rent paid is highly unusual in compensation for loss of quiet enjoyment. Therefore this portion of the Tenants' application is **dismissed**.

The Tenants' application had some merit and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

The Tenants' application for return of the security deposit is **dismissed with leave to reapply**.

I hereby provide the Tenants with a Monetary Order in the amount of **\$91.00** for service upon the Landlord. This Order may be filed in the Provincial Court 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 18, 2013

Residential Tenancy Branch

