



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on May 7, 2013 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 27, 2013 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

This hearing was commenced on July 31, 2013 and adjourned to September 13, 2013 in order for the Landlord to provide evidence in response to the Tenant’s claim and to complete the hearing. The Tenant states that the Landlord’s evidence package has not yet been picked up by the Tenant. The Tenant states that no adjournment is sought to review this package.

Issue(s) to be Decided

Are the Parties entitled to their respective amounts claimed?

Are the Parties entitled to recovery of their respective filing fee?

Background and Evidence

The tenancy started on February 1, 2012 on a fixed term to January 31, 2014. The Tenants gave notice to end the tenancy on March 23, 2013 and the tenancy ended on April 30, 2013. The rent as of February 1, 2013 was \$3,338.00. At the outset of the tenancy the Landlord collected \$1,600.00 as a security deposit. The Parties mutually conducted a move-in inspection and on April 30, 2013 conducted a move-out inspection.

The Landlord states that after receiving the Tenant's notice to end tenancy, the unit was advertised on March 28, 2013 and that a new tenant was obtained for May 21, 2013. The Landlord claims rental income loss of \$2,153.52. The Landlord states that a professional was contracted to re-rent the premises and claims the costs of \$1,752.45. The Landlord states that a new tenant could not be found earlier as none of the previous applicants were suitable as one or more had no financial history in Vancouver, one had a pet, one had odd behavior, and one could not be interviewed in person. The Landlord states that she only took the time it required to find a suitable tenant and submits that a professional was hired in order to reduce the confusion between the Parties overlapping re-rental efforts. The Landlord provided copies of, among other things, the tenancy agreement, correspondence between the Parties and invoices.

The Tenant states that the Landlord became confrontational and hostile after a gas explosion in the oven on February 2013. The Tenant submits that the Landlord's behavior escalated over the months of February and March 2013. The Tenant states that the Landlord demanded that the Tenants leave the unit as it was not suitable for a family. The Tenant submits that the Landlord informed the Tenants that the parents were not allowed to be guests beyond a two week period and that they should leave. The Tenant submits that the Landlord repeatedly confronted the parents asking them to

leave. The Tenant states that the Landlord's behavior during visits to the unit became so bad that the Tenants' parents who were visiting from out of country wanted to leave early. A copy of an email from the Tenant to the Landlord, dated March 6, 2013 indicates the Tenants informed the Landlord of the length of the parents visit and asked whether the Landlord wishes to mutually end the tenancy.

The Landlord adamantly denies saying anything to the Tenants about them or their parents leaving the unit. The Landlord provided a copy of the reply dated March 15, 2013 to the Tenants indicating that the Landlord does not wish to end the tenancy and directs the Tenants to the sections of the tenancy agreement that makes provision for, among other things, additional occupants (section 13). This section indicates that any person, not listed in the agreement as an occupant, and who resides at the unit for longer than two weeks will be considered to be occupying the unit. The Tenants provided a copy of an email dated February 26 in which the Landlord indicates that the number of persons in the unit is unreasonable.

Tenant submits that the Landlord invaded their privacy when on a visit to the unit to inspect the carbon monoxide alarm the Landlord also went up another level without notice to or permission from the Tenants and entered other rooms in the unit taking photos. The Landlord denies taking photos of the Tenant's personal belongings but that she only took photos of the safety systems related to the fire sprinklers and carbon monoxide alarm. The Landlord states that all visits to the unit were in to remedy maintenance issues and that the Tenants were always given appropriate notice.

The Tenant states that the Landlord made their unit unliveable and refused to consider a mutual end to tenancy or a sublet so the Tenants gave notice and moved out of the unit. The Tenant provided, among other things, copies of correspondence between themselves and the Landlord, a witness letters from the parents, and a witness letter from a friend who is also a landlord.

The Landlord denies that the Tenants asked to sublet the unit. The Tenant points to an email dated March 28, 2013 where the Landlord refused to sublet to a German woman and that the Landlord told the Tenants that a sublet was not allowed.

The Tenant submits that with the agreement of the Landlord the unit was advertised by the Tenants on March 25 and 27 on a rental website. The Tenant states that they were inundated with serious offers to rent. The Tenant provided witness letters and email correspondence from prospective tenants in relation to their applications to rent the unit. The Tenant states that one person offered to pay extra rent and another offered to move in immediately or to sublet from the Tenants. The Tenant states that the Landlord refused to consider prospective tenants who were not Canadian.

The Tenant claims as follows:

- \$15.00 for stop payments on cheques that were not returned by the Landlord. The Landlord states that the cheques were returned to the Tenants through their lawyer on May 7, 2013. The Landlord states that as the Tenants could have changed their mind, the Landlord kept the cheques until that date;
- \$1,200.00 for the loss of use of the kitchen and the purchase of meals. The Tenant states that on February 22, 2013 the Landlord attended the unit due to an explosion in the oven but refused to call an inspector or repair person and offered to replace the stove with an electric stove. The Tenant states that the Landlord told the Tenants that the stove was safe to use in the meantime. The Tenant submits that after the Landlord left they called in a gas inspector from Fortis who informed the Tenants that the explosion was caused by a faulty ignition that caused a gas buildup and that the ignition could be repaired. The Tenant states that due to their concern of a gas buildup in the kitchen it became unusable. The Tenant states that their child has dietary requirements and that in order to meet these requirements they had to find specially prepared meals outside of the home. The Tenant states that the amount claimed is based on an average cost of \$15.00 for each of three meals, three times a day for 21 days. The Tenant

states that they did use the microwave on occasion. The Landlord states that the stove top and oven was fully operational and no danger however the Landlord replaced the stove on March 15, 2013. The Landlord further states that the Tenant confirmed in an email dated February 27, 2013 that the stove was in working order. The Landlord states that the amount claimed by the Tenants is excessive;

- \$2,500.00 for the cost of the Tenant's parent airline tickets. The Tenant states that the Landlord became verbally aggressive with the parent during the parents' visits and that the Landlord accused the parents of living in the unit. The Tenant states that due to this behavior the parents' vacation was ruined. The Landlord denies ever saying anything to the Tenants' parents;
- \$1,800.00 for the cost of storage to keep their belongings after the end of the tenancy and while the Tenants were out of the country until April 30, 2013. The Tenant states that they are now only subletting a unit that is not large enough for all of their belongings. The Landlord states that the storage lease is from April 15, 2013 and that the Landlord's property manager offered to find accommodation;
- \$4,800.00 for lost employment opportunities caused by the Tenants having to find another rental unit. The Landlord states that she also lost time due to the tenancy ending and disputes that the Tenant lost anything;
- \$720.00 for the cost of an automobile necessary to look for another rental unit for the period March 1 to 15, 2013. The Landlord states that the Tenants' notice was accepted on March 23, 2013;
- \$320.00 for the cost of moving some furniture to storage. The Landlord states that the Tenant did not have to move and they accumulated costs for their own purpose and not as a result of anything done by the Landlord;
- \$35.00 the costs of postage for services of documents;
- \$2,000.00 for the Tenants time in advertising and showing the unit. The Landlord states that she also showed the property and incurred costs that will be claimed;
- \$55.00 for the cost of a house relocation address form;

- \$355.00 for the cost of cancelling the house insurance as they could not transfer the insurance to another rental unit as they did not have a unit to move into following the end of the tenancy. The Landlord states that the Tenants did not have to move and should have been able to cancel the insurance and obtain a refund;
- \$3,200.00 for the return of double the security deposit;
- \$3,000.00 for compensation for the asthma suffered by the Tenants' child during the tenancy due to dust in the air. The Tenant states that the gas company inspected the furnace and informed the Tenants that the furnace required cleaning. The Tenant states that the Landlord did not clean the furnace filter and that the asthma cleared up two weeks after vacating the unit and while the Tenants were in Los Angeles. The Landlord states that the furnace was serviced regularly;
- \$450.00 for the cost of a second storage as the first storage was not large enough.

Analysis

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non complying party must compensate the other party for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

After careful consideration of each Party's oral and significant documentary evidence, I make the following findings:

I find on a balance of probabilities that in choosing to select a tenant suitable to the Landlord's requirements, the Landlord failed to pay attention to the obligation to take

reasonable steps to mitigate the losses claimed. The Landlord also incurred additional costs to hire a third party to rent the premises. In the face of losses and the concerted efforts of the Tenants to provide prospective tenants to the Landlord, I find the Landlord's requirements for prospective tenants to be unreasonable. I particularly note the outright rejection of a prospective tenant who offers to rent the unit immediately and at a higher monthly rental amount. As a result, and taking into consideration that the amount claimed for the costs of a third party arose after the rejection of several and in particular this one prospective tenant, I dismiss the Landlord's claim for lost rental income and the cost of renting the unit. As the Landlord has not been successful with its claims, I decline to award recovery of the filing fee.

Accepting that the Landlord did not agree to end the tenancy early, I find on a balance of probabilities that the Tenants choose to end the tenancy early and while I accept that the tenancy was ended due to the behavior and actions of the Landlord, I note that alternatives to ending the tenancy existed such as making an application for dispute resolution seeking an order in relation to the Landlord's actions. As such, I find that the Tenants are not entitled to compensation for looking for another unit and moving out of the rental unit as this was their choice. I therefore dismiss the Tenants claims for compensation in relation to storage, lost employment, car rentals, moving, home insurance and house relocation address form costs.

Section 28 of the Act provides that a tenant is entitled to reasonable privacy and freedom from unreasonable disturbance. While accepting the Landlord's evidence that the unit was attended solely in relation to repairs and maintenance and with notice to or agreement from the Tenants and accepting that the Landlord did not take photos of the unit any further than to photograph various elements of the unit, I find on a balance of probabilities that the Landlord otherwise caused the Tenants to be unreasonably disturbed by the Landlord's behavior in relation to the presence of the Tenants' parents. While the Landlord denies making any comments of this nature, I note the letter from the Landlord that directs the Tenants to the "deeming" provision of occupants and the email indicating the Landlord's determination that there were an unreasonable number

of people in the unit. These communications from the Landlord supports the Tenant's version of events which I find to be more credible nonetheless. I find on a balance of probabilities that the Landlord caused significant stress in what appears to be the Landlord's determination to dictate the length of time of the Tenants' guests and therefore unreasonably disturb the Tenants' peaceful enjoyment of the unit. I note that the Act does not allow a landlord to set unreasonable limits on guests and I do not consider extended visits by parents from another country to be either unreasonable or to constitute occupancy. As a result, I find the Tenants are entitled to compensation for the Landlord's breach of their right. I do not find that the Landlord's actions caused a loss in relation to the cost of the airfare for the parents however accepting that the Tenant's enjoyment of the unit was also affected by the treatment of their parents while in the unit, but noting that the Tenants otherwise had full enjoyment of the unit, I find that the Tenant has substantiated a nominal entitlement of **\$500.00**.

Accepting that the Tenants made significant efforts to re-rent the unit with the approval of the Landlord but noting that there was no evidence that the Landlord required the Tenants to carry out this work or that the Landlord agreed to compensate the Tenants for this work, I dismiss the Tenant's claim for compensation for re-renting efforts.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Landlord filed its application within 15 days of the end of the tenancy, I find that the Landlord is not required to repay the Tenant double the security deposit as claimed. As the Landlord still holds the full security deposit and is not entitled to make any deductions from the security deposit, I find that the Tenants are entitled to a return of the security deposit of **\$1,600.00** plus zero interest.

Given the evidence that the Tenant confirmed with the Landlord that following the explosion and the Fortis inspection the stove was in working order, I find that the Tenant

has not substantiated that the stove caused the Tenants to incur costs to eat outside of the home. I therefore dismiss this claim.

As the Act does not provide for any compensation for the cost of the dispute process beyond a recovery of the filing fee, I dismiss the Tenant's claim for postage costs.

I accept the Tenant's evidence that the gas inspector from Fortis determined in February 2013 that the furnace filter had not been replaced for at least three years. I also accept that the Landlord replaced the filter on March 16, 2013. It is reasonable to accept that the dust in the air could exacerbate existing breathing problems. While I accept that the child experienced problems in the unit, as the Tenant did not provide any medical evidence in relation to the their child's asthma, I find that they are only entitled to a nominal sum of **\$100.00** for discomfort caused by the Landlord's negligence in maintaining the furnace.

Based on the undisputed evidence that the Landlord returned the Tenant's cheques to their lawyer prior to the Tenant making an application, I dismiss the Tenant's claim for compensation for the bank charges to cancel the cheques.

As the Tenant's application has met with some success, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,250.00**

Conclusion

The Landlord's claims are dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$2,250.00**. If necessary, this order may be filed in the 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: October 4, 2013

Residential Tenancy Branch