



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, PSF, RP, RR, FF

Introduction

The tenant applies for a monetary order from the landlord. In her amended claim, the tenant also seeks an order authorizing the tenant to change the locks to the rental unit.

The landlord did not attend the hearing. I accept the tenant's testimony and evidence that the landlord(s) were properly served with the originating application, the amended application, and the supporting evidence packages, all by way of registered mail.

Issue(s) to be decided

1. Is the tenant entitled to a monetary award from the landlord?
2. Is it appropriate to authorize a change of locks to the premises?

Background and Evidence

1. This one year fixed term tenancy began September 1, 2013. Rent is \$1,400 per month, due on the first day of each month.
2. The tenant paid a security deposit of \$700.00 on August 17, 2013. No pet damage deposit has been paid. A refundable key deposit of \$150.00 was paid. A further "move in fee" of \$150.00 was paid.
3. A condition inspection occurred August 18, 2013. The tenant completed the inspection report at the landlord's request, but inadvertently entered information about one room in the wrong section. The landlord took the form wanting to review it before signing it. A further inspection occurred September 5, 2013. The landlord has never returned a signed copy of the condition inspection form to the tenant.
4. The landlord failed to properly clean the premises prior to the tenant taking possession. The tenant spent 18 hours cleaning the premises.
5. The landlord failed to ensure that all the appliances worked properly, prior to the tenant taking possession. The dishwasher leaked and the microwave oven needed repair. A toilet was plugged with a metal plate, and did not work properly until after the tenant's friend checked the toilet with a scope, found the problem, and repaired it. Many light bulbs were burned out. The oven was not working for the first month of the tenancy.
6. The landlord offered to paint the unit, but failed to do so. The landlord also offered that the tenant could paint the unit herself, and would be paid \$300.00 for that work in addition to the cost of materials. The tenant opted to paint the unit

herself.

7. The tenant did not have use of her storage unit until over a month after the tenancy began. She was required to keep large items in her apartment until then, reducing the amount of living space for that period.
8. The tenant reported a broken light fixture in the washroom to the landlord, but it was not repaired. A piece of glass fell from the fixture, cutting the tenant's wrist. No stitches or medical treatment was required, and the cut healed over in 4 days. A scar remains visible from this cut.
9. The tenant has been required to deal extensively with the landlord to have these various deficiencies and problems addressed and corrected. This has resulted in taking some time off from work, and has been stressful for the tenant.
10. The tenant believes the landlord may have entered her unit when she was not there. She has contacted the police to do surveillance.
11. In email replies to the tenant, the landlord has repeatedly suggested the tenant consider moving out. No formal notice to end tenancy has ever been provided to the tenant, however.

Analysis

The tenant alleges the landlord has wrongfully entered the premises, and seeks authorization to change the locks. The onus of proof in this regard lies with the tenant, and there is insufficient evidence at this point to confirm a wrongful entry. This portion of the claim is therefore dismissed, with liberty to the tenant to reapply, should she obtain confirmation of any subsequent wrongful entry by the landlord. I emphasize, however, that it is important that both parties know and abide by the legal requirements in this regard. For reference, I have inserted below an excerpt from the "Guide for Landlords and Tenants in British Columbia" which summarizes the rights and obligations regarding a landlord's access to the tenant's home.

10.6.2 Landlord Access

A landlord may enter a tenant's home after giving proper written notice stating the date, time and reason for the entry. The purpose of the entry must be reasonable. The tenant must receive the written notice at least 24 hours, and not more than 30 days, before the time of entry. Where proper notice has been given to the tenant, the landlord can enter whether the tenant is home or not.

The landlord can conduct a monthly inspection where proper notice is given to the tenant. A landlord may also enter any common areas, or the property, at any time without giving the tenant notice. The landlord can also enter:

- With the tenant's consent
- With a Dispute Resolution Officer's order, or
- If an emergency exists and the entry is necessary to protect life or property.

In the absence of any evidence from the landlord as to the nature or conditions of the \$150.00 "move in fee", I find that the fee cannot be supported. I order that the landlord

repay this sum to the tenant.

The landlord's failure to clean the premises properly, prior to the tenant taking possession, was a breach of the landlord's obligations under the Residential Tenancy Act, and under the tenancy agreement. The tenant is entitled to be compensated for the 18 hours of time spent to clean the unit. At a rate of \$25.00, I award the sum of \$450.00.

The tenant accepted the landlord's offer to paint the unit in exchange for \$300.00. The landlord must pay this sum to the tenant. Additionally, the tenant incurred expenses of \$212.25, which must be paid to the tenant by the landlord.

The tenant testified she took some time from work to deal with tenancy issues. While this may be true, I find insufficient evidence to substantiate the tenant's claim for loss of employment income. A claimant must mitigate their loss and the tenant has not provided convincing proof that it was necessary to miss work. For example, it may have been possible to having a friend be present at the premises while work was being done by the landlord's workers. Perhaps the tenant could have used evenings or weekend time rather than miss work time. Perhaps the tenant could have worked extra shifts to make up for any lost time. Further, there is no confirmation of a loss from the tenant's employer tendered into evidence.

The claimant seeks recovery of the cost of medications, such as prescriptions for anxiety and sleeping pills. In the absence of sufficient supporting medical evidence (such as a letter of opinion from her doctor that the medications are related to stress caused by the landlord), this portion of the claim must be denied. There is insufficient evidence that the conduct of the landlord has caused the requirement for the medications.

I am asked to determine whether the landlord has breached the implied covenant of quiet enjoyment in every tenancy agreement, and the statutory obligation to provide a tenant quiet enjoyment and freedom from unreasonable disturbance (found in the section 28 of the Act). In making such a determination, I must take into consideration the seriousness of the situation, and the length of time over which the situation has existed, and the actual steps taken by the landlord.

The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that renders the premises unfit for occupancy for the purposes for which they were leased. Frequent and ongoing interference (by way of omission) by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment, such as the failure by the landlord to take adequate steps to control

unreasonable and ongoing noise by other tenants of the landlord.

In this regard, the landlord failed to provide the premises in a good and clean condition, and with properly functioning appliances and fixtures. As a result, the tenant was unable to enjoy the premises until she herself cleaned them (which took her 18 hours). She was unable to enjoy the use of the oven for the first month of the tenancy. She could not use the storage until after October 5. The use of the apartment was restricted due to the items that should have been in storage, being in the unit itself. Further, the tenant was obliged to remain in ongoing dialogue with the landlord, in an effort to get all of the necessary work completed. The landlord responded on several occasions with suggestions that the tenant move out, rather than simply and quickly attend to the necessary repairs. The tenant has on the other hand, been able to reside in the premises, and therefore it is clear that the tenant has obtained some use and enjoyment from the premises. Her claim for reimbursement of 3 months of rent is excessive.

For the breach of quiet enjoyment, I find that the tenant is entitled to recover $\frac{3}{4}$ of her rent for the first month of the tenancy (\$1050.00), and half her rent for the second month (\$700.00). I find no significant breach to have been proven beyond that point. I therefore award the sum of \$1,750.00.

In addition to her claim for loss of quiet enjoyment, the tenant seeks damages of \$12,000.00, ostensibly for the stress and inconvenience she has suffered due to the landlord's failures. I note that there is some overlap between this claim, and the claim for loss of quiet enjoyment. It may be that the tenant has suffered some anxiety and stress due to the landlord's conduct, but as already indicated, this claim is not supported by any medical assessment or opinion. I cannot assess the scope of any loss in this regard, and can therefore only award nominal damages for this component of the claim, and award the sum of \$100.00. Additionally, the tenant suffered minor injury when her wrist was cut by the falling glass. No medical attention was needed, and I have no evidence that any scarring will be permanent or disfiguring in any way. Nevertheless the tenant is entitled to nominal damages for this further issue, as it related to a safety issue that should have been addressed by the landlord. I award a further \$100.00 to the tenant.

The tenant may recover her \$100.00 filing fee from the landlord.

The total amount awarded to the tenant is \$3,162.25, and the landlord must pay this sum to the tenant. Until such time as the sum is fully paid, the tenant is authorized to apply her monthly rent towards this sum. For example, if the sum is not paid by the landlord by December 1, the tenant may apply her monthly rent for December of \$1,400.00 towards the sum owed, leaving a balance due by the landlord thereafter, of \$1,762.25. If that reduced balance is not paid by the landlord by January 1, the tenant may apply her monthly rent for January of \$1,400.00 towards the sum owed, leaving a balance due by the landlord thereafter, of \$362.25. If not paid by the landlord, that sum of \$362.25 may be deducted from February's rent.

Conclusion

The tenant is awarded \$3,162.25.

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 13, 2013

Residential Tenancy Branch