Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 30, 2013, by the Tenant to obtain a Monetary Order for: the return of double her pet and security deposits; and for money owed for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The undisputed testimony confirmed that the parties entered into a written month to month tenancy agreement that began on April 1, 2013. Rent was payable on or before the first of each month in the amount of $900.00. The Tenant was required to prepay a portion of the utilities in the amount of $100.00 each month and pay any balance owing when the bill was received. On March 28, 2013 the Tenant paid $450.00 as the security

deposit and $400.00 as the pet deposit. On July 31, 2013, the Tenant served the Landlord written notice to end the tenancy effective August 31, 2013. The move in condition inspection report form was completed April 5, 2103, and the move out condition inspection report form was completed August 31, 2013. The Tenant provided the Landlords with her forwarding address on August 31, 2013.

The Tenant filed seeking $2,710.00 [sic] which is comprised of:

$1,700.00	double her deposits (2 x $450.00 + 2 x $400.00);
$600.00	loss of use of two bedrooms for two months calculated as 1/3 of the rent;
$225.00	cost of a couch $75, loveseat and two chairs $50, and four mattresses and box springs at $25.00 per set,
$ 60.00	20 loads of laundry and supplies
$120.00	Removal of damaged furniture and dump fees

The Tenant pointed to her evidence which included copies of cheques written for the return of her deposit as follows: Cheque # 259 dated September 16, 2013 for $721.47 and cheque # 262 dated October 2, 2013 for $46.55. The September cheque was mailed and post marked September 24, 2013, as per the copy of the envelope provided in her evidence and the second cheque was received sometime in October. The Tenant argued that the deposits were returned after the fifteen day time limit and therefore, she is entitled to double the amounts. She has cashed both cheques.

The Tenant testified that in May 2013 she discovered her bedding was damp and there appeared to be a lot of moisture in her basement suite. She noticed mildew in the corner of the living room and on a table in one of the bedrooms. She cleaned this up with bleach and reported her findings to the Landlords. The Landlords attended the unit and they talked about the dehumidistat control that was on the wall and how it did not work.

The Tenant stated that she continued to advise the Landlords and their maintenance person of her concerns. The maintenance person suggested better venting, specifically to change the vent on the fan over the stove to the outside. As of June she moved her daughter out of one of the bedrooms and into the living room. The laminate flooring had buckled and bulged from the moisture. She attended numerous appointments with the Landlords and maintenance person and by the end of June 2013 the floor was repaired. In July 2013, the vent over the stove was piped to the outside.

The Tenant argued that the moisture issues continued through July so she had the beds and everything outside to air out. She continued to speak with the Landlords and maintenance person to try and figure out a resolution. In mid July she pulled clothing out of the closet and found mildew on them so she decided to close off the room at the end of July and moved all the beds into the living room and gave her notice to end the tenancy. The Landlords had the de-humidistat reconnected in mid August 2013.

The Tenant stated that the amounts claimed for her furniture, as listed above, are amounts she "pulled out of the air". She stated that she looked up on the internet for the average amounts being charged and submitted a low value. She also provided an invoice from the person who removed the furniture and a photo showing them loaded into the truck.

The Landlords testified that they purchased this property 25 years ago and had never known if the de-humidifier was connected or not because they never had any problems with moisture in the past. The rental unit is a two bedroom basement suite which had been totally renovated prior to this tenancy. They thought the unit was too small for the Tenant and her three teenage children but they agreed to rent it to her to help her out.

The Landlords confirmed that they knew they were a little late mailing the deposit refund but argued that they had initially thought the Tenant would be picking up the cheque. They called her two times and when she did not come to get the cheque they put it in the mail.

The Landlords stated that they attended to all of the Tenant's concerns. They tried to satisfy all her concerns having the floor repaired, the hood fan vented outside, and getting the dehumidistat hooked up. They argued that she never showed them the actual presence of mold or mildew so they did not know the extent of the problem.

In closing, the Tenant stated that the Landlord's maintenance contractor saw the mold. Also, when the Landlords attended the unit one time all of her beds were outside airing out and they never questioned or acknowledged that. Their maintenance contractor was fully aware of the problem because they were all sleeping in the living room. It was a health hazard so they had to move. She did not dispute the amounts retained by the Landlords for the cost of utilities.

The Landlords noted that they have since re-rented the unit to two adults. There have not been any problems with moisture or mold in the unit since the Tenant and her children moved out.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

I have carefully considered the aforementioned and the Tenant's written arguments and evidence; and on a balance of probabilities I find as follows:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that the Tenant reported the presence of moisture in the residential property and that the Landlords initiated repairs. As such, I make no findings on the matter of the necessity of the work.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenant had argued compensation based on Section 27 in her written submission, I find she has provided no evidence indicating that the Landlords had breached this section of the *Act*.

That being said, I accept the Tenant's submission that from the end of July 2013, she no longer used the two bedrooms. I note that this decision was initiated by the Tenant and was temporary in nature, as she had already given her notice to end the tenancy. This was not initiated by the Landlords and therefore could not me intended by the Landlords to be a permanent withdrawal or restriction of the use of the bedrooms. As a result, I dismiss any claim pursuant to section 27 of the Act.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlords to make the rental unit suitable for occupation which warrants that the Landlords keep the premises in good repair. For example, failure of the Landlords to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building would deteriorate occupant comfort and the long term condition of the building.

I accept the Landlords' evidence and testimony that they took reasonable steps to ensure repairs were being done to eliminate the moisture problem. That being said, I also accept the Tenant's submission that the work and its schedule required intrusion into the rental unit and the Tenant's time.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

From the evidence, I accept that the floor was replaced in June 2013, the hood fan above the stove was vented outside in July 2013, and the de-humidistat was reconnected in August 2013. The Tenant stopped using her daughter's bedroom sometime in June and stopped using both bedrooms by the end of July 2013. There is very little evidence to support the allegations that the Landlords knew the extent of the

moisture problem or that they knew the Tenant was no longer using both bedrooms. As such, I am not satisfied that this was the only alternative available to the Tenant; and therefore, I find her claim of $600.00 for loss of the use of the two bedrooms to be excessive.

While I accept that the Landlords took great efforts to minimize the disturbances for the Tenant by engaging in repairs, I find it undeniable that the Tenant suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the Tenant is entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Section 67 of the Residential Tenancy Act states:

> *Without limiting the general authority in section 62(3) [director's authority], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

For the reasons noted above, I find the Tenant is entitled to monetary compensation pursuant to Section 67 for any or all the loss of quiet enjoyment for the entire period of the tenancy, in the amount of **$300.00.**

The Tenant has claimed for the cost for laundry and for furniture and beds, which she states were thrown away because of the presence of mildew or mold. The Tenant testified that she determined the amounts claimed "out of thin air" after looking on the internet. She is also seeking the cost to remove those items and a landfill fee. In support of this claim the Tenant submitted a photograph of a loaded truck and an invoice dated August 30, 2013, which states:

> *BILL FOR REMOVAL OF FURNITURE AND MILDEW MATTRESSES FROM (RENTAL UNIT ADDRESS)*

In this instance, I find the Tenant has provided insufficient evidence to prove or verify the mattresses had to be thrown out instead of simply being cleaned. Furthermore, there is insufficient evidence to prove the actual value of all of the items claimed or prove that the Tenant actually replaced those items. I make this finding in part because

the Tenant failed to provide testimony about when or how these items were replace and there were no receipts or dates provided for the purchases of any new items. Furthermore, there was no landfill receipt to prove the items were thrown away. Rather, the Tenant relied on a photo of a truck, which displays a full load including numerous other possessions such as metal bed frames, and a bicycle; items which are metal and would not be discarded for the presence of mildew.

While I accept that some laundry had to be done, there is insufficient evidence to prove that twenty loads were done as a result of the mildew, or prove what the actual cost was to the Tenant for that laundry.

In an instance where a party is relying on estimates from the internet, or items purchased off of the internet, I would expect to see the advertisement for the item purchased, if paid in cash, and evidence of a date of when the purchase took place.

Based on the above, I find there to be insufficient evidence to prove the actual amount of the loss being claimed for furniture, beds, or laundry. Therefore, I dismiss the Tenant's claim, without leave to reapply.

The Tenant had prepaid hydro in the amount of $100.00 and the actual bill was $53.45. The Landlords returned the overpayment to the Tenant on October 2, 2013 once the bill had been received. The Tenant did not dispute the amount of the hydro bill being withheld. Based on the aforementioned, I find the hydro bill payment was handled in a manner that complied with the tenancy agreement.

The undisputed evidence was the security deposit was $450.00; the pet deposit was $400.00; the tenancy ended August 31, 2013; the Landlords received the Tenant's forwarding address on August 31, 2013; and the Tenant did not dispute that the Landlords were to retain the cost of the outstanding utilities from the deposits which amounted to $128.53 for the water bill.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Based on the above, I find that the Landlords were required to return the security and pet deposits or file for dispute resolution no later than September 15, 2013. They did not file for dispute resolution and did not return the deposits until September 24, 2013 (date of post mark).

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and pet deposits.

Accordingly, I find the Tenant has met the burden of proof to establish her claim and I award her double the deposits plus interest in the amount of **$1,700.00** (2 x $450.00 + 2 x $400.00 + $0.00 interest).

Monetary Order The Tenant has been awarded a Monetary Order as follows:

Loss of quiet enjoyment	$ 300.00
Double the Security and Pet deposit	1,700.00
SUBTOTAL	$2,000.00
LESS: Payment received by Tenant	-721.47
Offset amount due to the Tenant	**$1,278.53**

NOTE: The $46.55 payment is not deducted from the monetary amount as I had found above that the hydro payment was handled separately, in accordance with the tenancy agreement.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **$1,278.53**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not 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: December 31, 2013

Residential Tenancy Branch