



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, MNDC, and FF

Introduction:

This hearing was convened in response to cross applications.

On December 03, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied to retain the security deposit, for a monetary Order for money owed or compensation for damage or loss/unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

On December 24, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and a monetary Order for money owed or compensation for damage or loss.

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. At the outset of the hearing the Tenant with the initials "J.M." would be the spokesperson for the Tenant and she provided the bulk of the oral evidence for the Tenant.

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 Landlord entitled to retain the security deposit or should it be returned to the Tenant?

Is the Landlord entitled to compensation for unpaid rent/lost revenue?

Is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on April 01, 2013; that it was a periodic, or month-to-month tenancy; that the Tenant agreed to pay monthly rent of \$1,100.00, in advance, by the last day of each month; and that the Tenant paid a security deposit of \$550.00.

The Landlord and the Tenant agree that a condition inspection report was not completed at the beginning or the end of the tenancy. The Landlord stated that the rental unit was jointly inspected on April 01, 2014 and the Tenant stated that the rental unit was not jointly inspected on April 01, 2014. The Landlord stated that the rental unit was jointly inspected on March 13, 2014 and the Tenant stated that the rental unit was not jointly inspected on March 13, 2014. The Landlord stated that the rental unit was jointly inspected on March 08, 2014 and the Tenant stated that the rental unit was viewed on March 08, 2014 for the purposes of determining whether the Tenant wanted to rent the unit, at which time they did discuss some deficiencies with the rental unit.

The Landlord and the Tenant agree that on November 28, 2013 the Tenant posted a notice on the Landlord's door, which informed the Landlord that the Tenant intended to vacate the rental unit by December 01, 2013. The Tenant stated that the rental unit was vacated on November 30, 2013 and the Landlord stated that it was vacated on December 01, 2013. The parties agree that the Tenant left a document in the rental unit at the end of the tenancy, which contained a forwarding address for the Tenant.

The Landlord stated that she advertised the rental unit on three popular websites on, or before, December 01, 2013; that she was unable to find a new tenant for the unit; and that she eventually moved into the unit on February 01, 2014. The Landlord is seeking compensation for lost revenue/unpaid rent for December of 2013 and January of 2014, in the amount of \$2,200.00.

The Landlord and the Tenant agree that on April 30, 2013 the Tenant informed the Landlord that the bathroom light stopped working and that the light was repaired on May 03, 2013. The Tenant is seeking compensation for this inconvenience, as it was the only source of light in the bathroom.

The Landlord and the Tenant agree that on July 31, 2013 the Tenant informed the Landlord that one of the elements in the oven was not working. The Tenant stated that the Landlord inspected the oven and told the Tenant to simply use higher temperatures when cooking. The Landlord stated that when she inspected the oven she determined that both elements were working properly and that she did not tell the Tenant to simply cook at higher temperatures. The Tenant is seeking compensation for this inconvenience, as it interfered with their ability to use the services that were provided with the tenancy.

The Landlord and the Tenant agree that on November 20, 2013 the Tenant reported another problem with the oven. The Landlord stated that she understood that only one

element had stopped working; that on November 22, 2013 she sent the Tenant an email informing the Tenant that she would repair the oven on November 24, 2013; and that when she went to the rental unit to repair the oven on November 24, 2013 the Tenant would not let her into the unit for the purposes of repairing the oven.

The Tenant with the initials "A.D." stated that the Tenant did not receive the email that was sent on November 22, 2013, as they did not have internet service in the unit and that the Landlord was not allowed to enter the unit on November 24, 2013, as they had not received proper notice of her intent to enter the unit. The Tenant is seeking compensation for this inconvenience, as it interfered with their ability to use the services that were provided with the tenancy.

The Landlord and the Tenant agree that internet service was not provided with this tenancy. The Tenant stated that when this tenancy began the Landlord informed the Tenant that they could use her internet service and that the Landlord provided the Tenant with her Wi-Fi password. The Tenant stated that the Landlord changed her password sometime near the end of June or the beginning of July, without informing them that they could no longer access her internet service.

The landlord stated that she never informed the Tenant that they could use her internet service and that she never provided the Tenant with the Wi-Fi password, although one of her roommates may have. She stated that she did not know the Tenants were using her internet service until they informed her they could no longer access that service.

The Tenant stated that they contacted two popular internet providers and were informed that service could not be provided to the rental unit unless the Landlord paid to have an additional cable installed. The Tenant stated that they informed the Landlord that she would have to pay for the installation and that she refused to pay for it. The Tenant is seeking compensation for this inconvenience, as it interfered with their enjoyment of the rental unit.

The Landlord initially stated that the Tenant never asked her to pay to have internet service installed in the rental unit. After reading an undated letter submitted in evidence by the Tenant, she acknowledged that the Tenant informed her that she needed to pay for the installation, although she just now understands that this was a request for the installation.

The Tenant stated that they noticed silverfish in the rental unit throughout the tenancy. The Tenant stated that the problem was first reported to the Landlord on November 01, 2013, although no evidence was submitted that corroborates that claim. The Tenant stated that it was reported to the Landlord a second time on November 24, 2013.

The Landlord stated that the problem with silverfish was not reported to her until November 24, 2013 and that she did not respond to that report as the Tenant gave their notice to vacate a few days later. The Tenant stated that they noticed silverfish in the rental unit throughout the tenancy.

The Landlord and the Tenant agree that on, or about, November 20, 2013 the Tenant informed the Landlord that the fridge was leaking. The Landlord stated she did not respond to that report as the Tenant gave their notice to vacate a few days later.

The Tenant stated that they were periodically disturbed by noise from the Landlord's suite, which is above the rental unit. She stated that the Landlord was never informed that she was disturbing the Tenant. The Landlord stated that she was not aware the Tenant was being disturbed by noise.

The Tenant stated that the Landlord informed them that she would repair the floors in the living room prior to the start of the tenancy; that the floors were never repaired; and that they and their pet got slivers from the flooring. The Landlord stated that she never promised to refinish the living room floor and she was not advised of a problem with the floor until late in the tenancy. The Tenant submitted photographs of the hardwood floor.

The Tenant stated that the Landlord informed them that she would install laminate flooring in two bedrooms prior to the start of the tenancy and that it was only installed in one bedroom. The Landlord stated that she promised to install laminate flooring in one bedroom prior to the start of the tenancy and that it was installed in one bedroom.

The Landlord and the Tenant agree that on July 30, 2013 or July 31, 2013 the Tenant reported a problem with mould in the rental unit and that the Landlord subsequently cleaned the area the Tenant believed was infected with bleach. The parties agree that the problem with mould was not reported again until sometime at the beginning of November of 2013.

The Landlord and the Tenant agree that the Landlord was in the rental unit on November 07, 2013 to deal with a variety of issues. The Landlord stated that she asked the Tenant about the mould at this time and she was told that there was not a problem. The Tenant stated that the Landlord did not ask about the mould on November 07, 2013, although she acknowledges that she did not raise the issue with the Landlord.

The Tenant stated that when they moved their mattress at the end of the tenancy, they discovered mould on their mattress which had been on the floor. The Tenant submitted photographs and digital images of this mattress, which appears to have mould growing on it. The Tenant also submitted digital images of the corner of the bedroom which they allege shows there is mould growing on the wall.

The Tenant stated that the police attended their rental unit on the evening of November 28, 2013 because the Landlord had reported that they had turned off the hot water tank.

The Landlord stated that she has not noticed mould in the rental unit since the end of the tenancy.

Analysis:

I find that the Tenant failed to comply with section 45 of the *Residential Tenancy Act* (Act) when the Tenant failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on November 30, 2013 in compliance with section 45 of the Act, the Tenant would have had to provide written notice to the Landlord on, or before, October 30, 2013. As the Tenant did not give written notice to the Landlord until November 28, 2013, I find, pursuant to section 53 of the Act, that the earliest effective date of this notice was December 30, 2013.

I find that Landlord was prevented from entering into a tenancy agreement with another occupant until the Tenant vacated the rental or until the effective date of the Tenant's written notice to vacate. As tenants typically search for new accommodation at the beginning of the month with the intent to move in the following month, I find that the late notice provided to the Landlord significantly interfered with the Landlord's ability to find a new tenant for December of 2013.

On the basis of the undisputed evidence that the rental unit was advertised on several websites prior to December 02, 2014, I find that the Landlord made a reasonable effort to find new tenants. I therefore find that the Tenant is obligated to compensate the Landlord for the lost revenue the Landlord experienced during the month of December of 2013, in the amount of \$1,100.00.

As the written notice provided by the Tenant served to end the tenancy on December 30, 2013, I find that the Tenant is not obligated to compensate the Landlord for any lost revenue experienced after the proper effective date of the notice. I therefore dismiss the Landlord's claim for lost revenue for the month of January of 2013.

Residential Tenancy Branch Policy Guidelines suggest that temporary discomfort or inconvenience does not generally constitute a breach of a tenant's right to the quiet enjoyment of the rental unit. It further suggests, however, that 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 when making repairs. I concur with these guidelines.

I find that the Landlord acted reasonably and responsibly when the Landlord repaired the bathroom light within three days of it being reported broken. I find the delay reasonable, given that the repair required the services of a skilled tradesperson. In spite of those efforts, I find that the delay was a significant inconvenience for the Tenant, given that there was no alternate light source in the bathroom. I find that the Tenant is entitled to compensation of \$25.00 for this inconvenience.

When making a claim for damages under a tenancy agreement or the *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 establish that only one oven element was working in July of 2013. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that it was not working or that refutes the Landlord's testimony that it was working. As the Tenant has failed to meet the burden of proving the oven was not functioning properly in July of 2013, I am unable to award compensation for this alleged deficiency.

I find that the Landlord acted reasonably and responsibly when the Landlord attempted to repair the oven within four days of it being reported broken in November of 2013. I find that the Tenant interfered with the Landlord's ability to make the repair in a timely manner, as the Tenant refused to give the Landlord permission to enter the rental unit for the purposes of making the repair. Although the Tenant was not obligated to provide the Landlord with access to the rental unit on November 24, 2013 because they had not received written notice of the Landlord's intent to enter, I find that the Tenant could have had the oven repaired on that date by simply giving the Landlord verbal permission to enter the rental unit.

As the actions of the Tenant contributed to the oven not being repaired in a timely manner, I find that the Tenant is not entitled to compensation for being without a functional oven for the last ten days of the tenancy. This decision is based, in part, on my determination that being without an oven for a short period is not a significant inconvenience, as an oven is not essential for cooking.

On the basis of the undisputed evidence, I find that internet service was not included as a formal term of the tenancy agreement. Even if the Landlord did agree to allow the Tenant to access her Wi-Fi at some point during the tenancy, I cannot conclude that she was obligated to continue to allow the Tenant to access it, given that it was not a term of their tenancy agreement.

Given that the Landlord was not obligated to provide internet service to the Tenant, I cannot conclude that the Landlord was obligated to pay to have the rental unit wired for a new internet account. In the event that the Tenant wished to have internet service, I find they had the right to ask permission to have the unit wired for a new account and to pay the cost of that installation. As the undisputed evidence is that the Tenant asked the Landlord to pay for the cost of installation and they never simply asked for permission for the installation, I find that the Landlord had every right to deny the request. For these reasons, I dismiss the Tenant's claim for compensation for being without internet service in the rental unit.

I find that the Tenant submitted insufficient evidence to show that the problem with silverfish was reported to the landlord on November 01, 2013. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that it was reported on that date or that refutes the Landlord's testimony that it was not reported on that date. As the Tenant has failed to meet the burden of proving that the problem was reported on November 01, 2013, I cannot conclude that the Landlord was obligated to respond to that report.

On the basis of the undisputed evidence, I find that the problem with silverfish was reported to the Landlord on November 24, 2013. As the Tenant subsequently informed the Landlord that they would be vacating the rental unit at the end of the month, I find the Landlord's delay in responding to this report was reasonable. In determining that the delay was reasonable I was influenced, in part, by the absence of evidence that shows silverfish pose a health risk. I was also influenced by the fact that it generally takes a few days to arrange treatment and that treating the rental unit within days of the tenancy ending would not benefit the Tenant enough to warrant the disruption that treatment would cause. For these reasons, I dismiss the Tenant's claim for compensation for silverfish.

On the basis of the undisputed evidence, I find that the Tenant reported that the fridge was leaking on November 20, 2013. As the Tenant did not inform the Landlord that they would be vacating the rental unit November 28, 2013, I find that the Landlord's delay in responding to this report was unreasonable. I find that the Landlord should have made arrangements to have the fridge inspected/repared before she received notice of the Tenant's intent to vacate. I find that the inconvenience of having a leaking fridge for a period of 10 days is so minimal, however, that it does not warrant compensation. I therefore dismiss the Tenant's claim for compensation for the leaking fridge.

A tenant cannot expect compensation for noise disturbances if the problem is not brought to the attention of the landlord. There can be no reasonable expectation that the landlord will remedy a problem that is not brought to the attention of the landlord. As the undisputed evidence is that the Tenant never informed the Landlord that they were being disturbed by noise emanating from the Landlord's suite, I find that the Tenant is not entitled to compensation for those disturbances.

I find that the Tenant submitted insufficient evidence to establish that the Landlord promised to fix or refinish the living room floor or to install laminate flooring in the second bedroom. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the repairs were promised or that refutes the Landlord's testimony that they were not promised. As the Tenant has failed to meet the burden of proving the Landlord promised to repair/refinish the living room floor or to install laminate flooring in a second bedroom, I am unable to award compensation for a failure to do so.

On the basis of the photographs submitted in evidence, I find that the hardwood floor in the living room is in a reasonable state of repair. While I accept that the Tenant and/or their pet may have received a sliver(s) at some point during the tenancy, I cannot conclude that the floor needed to be repaired as a result of that. I find that there is a risk of getting a sliver from an older hardwood floor. In the absence of evidence that shows the Tenant or their pet received a significant injury from the floor, I cannot conclude that they are entitled to compensation for that injury.

On the basis of the undisputed evidence, I find that the Landlord responded in a reasonable manner when the Tenant reported mould in the rental unit in July of 2013, when she cleaned the area the Tenant believed was impacted by mould.

On the basis of the undisputed evidence, I find that the Tenant again reported a problem with mould in November of 2013. On the basis of the digital image of the corner in one of the bedrooms, I am not satisfied that there was a significant amount of mould in that room. In my view the digital image does not clearly establish the existence of mould. I find that it is likely the Tenant was not overly concerned with mould in the room, given that the Tenant did not raise the issue when the Landlord was inspecting the unit on November 07, 2013. Assuming that there was a small amount of mould in the corner, I find that the Tenant could have easily mitigated that problem by cleaning the area with bleach. I find that any mould in the rental unit was a minor inconvenience that does not warrant compensation.

On the basis of the photographs submitted in evidence, I accept that there was mould growing on the Tenant's mattress, which was not detected until the end of the tenancy when the mattress was moved. As it is not uncommon for mould to grow on the underside of mattresses that are placed directly on the floor, I cannot conclude that the moisture on the mattress was the result of a deficiency with the rental unit. In reaching this conclusion I was influenced, in part, by the absence of evidence that shows there was a significant amount of mould in the rental unit. I therefore cannot conclude that the Tenant is entitled to compensation for mould on the mattress.

I find that a landlord has a right to contact the police if the landlord has reason to believe a tenant is harassing or disturbing the landlord, even if the landlord is incorrect. In the absence of a pattern that shows the Landlord was making a series of false reports to the police, I cannot find that the Tenant is entitled to compensation because the Landlord reported them to the police on one occasion, even if the report was unfounded. I therefore find that compensation is not warranted for this single incident.

I find that the Application for Dispute Resolution filed by each party has some merit and therefore each party is obligated to pay the costs of filing their own Application for Dispute Resolution.

Conclusion:

The Landlord has established a monetary claim of \$1,100.00 in compensation for lost

revenue. The Tenant has established a monetary claim of \$25.00 in compensation for being without a light in the bathroom for a period of time. After offsetting the two monetary claims, I find that the Tenant owes the Landlord \$1,075.00.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$550.00 in partial satisfaction of this monetary claim. I therefore grant the Landlord a monetary Order in the amount of \$525.00. In the event that the Tenant 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: March 25, 2014

Residential Tenancy Branch

