



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF, MT, RR

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for more time to apply to cancel a Notice to End Tenancy; for authorization to reduce the rent; and for "other". At the outset of the hearing the Tenant withdrew the application for more time to apply to cancel a Notice to End Tenancy, as she has vacated the rental unit and no longer wishes to dispute the Notice to End Tenancy.

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.

The Agent for the Landlord and the Tenant agree that the Tenant did not provide the Landlord with a forwarding address, but that on June 12, 2014 the Landlord was able to personally serve the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon at the hearing. The documents served on this date were accepted as evidence.

The Agent for the Landlord and the Tenant agree that the Tenant served the Landlord with her Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence, sometime in May of 2014. The documents served on this date were accepted as evidence.

On May 30, 2014 the Landlord submitted Canada Post receipts to the Residential Tenancy Branch. As these were not served to the Tenant, they were not accepted as evidence for these proceedings.

On June 18, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on June 21, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent, unpaid utilities, and/or damage to the rental unit?

Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2014; that rent of \$800.00 was due by the first day of each month; and that the Tenant paid a security deposit of \$200.00.

The Landlord and the Tenant agree that the Tenant did not pay rent for May of 2014. The Landlord is seeking compensation of \$800.00 for unpaid rent for May of 2014.

The Landlord stated that on May 03, 2014 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 15, 2014. The Tenant stated that she received this Notice to End Tenancy on May 02, 2014.

The Tenant stated that on May 07, 2014 she filed an Application for Dispute Resolution in which she intended to apply to dispute the Ten Day Notice to End Tenancy. She stated that she was advised she had completed the Application incorrectly and she subsequently amended it to include an application for more time to apply to cancel a Notice to End Tenancy.

The Tenant stated that she subsequently decided that she should vacate the rental unit; that she vacated the rental unit on May 24, 2014; and that on May 24, 2014 she informed the Landlord that she had vacated the rental unit. The Landlord stated that sometime in early May of 2014 the Tenant told him she would vacate by May 15, 2014; that she did not vacate on that date; and that he first realized she was gone on May 27, 2014.

The Landlord is seeking compensation for lost revenue from June of 2014. He stated that she did not immediately advertise the rental unit when he learned the Tenant had vacated because he needed to clean the rental unit and he needed time to "do nothing". He stated that he began advertising the unit on June 15, 2014 and that he located a new tenant for July 01, 2014.

The Landlord is seeking compensation for repairing a pedestal sink, which the Tenant's children pulled from the sink while brushing their teeth. He stated that he re-attached the sink using drywall anchors and that the sink has never been secured to the studs in the wall. The Tenant stated that she believes the sink became detached from the wall because it was never properly attached to the wall.

The Landlord is seeking compensation for changing the locks to the rental unit. The Landlord and the Tenant agree that sometime in May the Tenant told the Landlord that she had changed the locks to the rental unit. The Tenant stated that she told the Landlord that she had changed the locks because she was worried he would enter her unit without lawful authority, but that she did not actually change the locks. The Landlord stated that he did not confirm that the locks had been changed before he changed the locks at the end of May.

The Landlord and the Tenant agree that the Tenant was responsible for paying 40% of the hydro and gas costs incurred during her tenancy. The Landlord submitted a copy of a hydro bill, dated April 04, 2014, and a gas bill, dated April 02, 2014. The Landlord and the Tenant agree that the Tenant owes \$97.36 for her portion of these costs.

The Landlord is also seeking compensation for utility costs from May and June of 2014, however he did not submit copies of gas or hydro bills for those months. The Tenant stated that she is willing to pay 40% of any costs that were incurred during her tenancy, although she wants to see the bills before she pays her portion.

The Landlord is seeking \$100.00 in filing fees as he was charged the filing fee twice, due to an administrative error at the Residential Tenancy Branch.

The Landlord is seeking \$500.00 in compensation for time, stress, and costs of participating in this hearing.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, as a result of several deficiencies with the rental unit, including:

- A battery operated storage light under the stairs, which the Landlord informed her would not work until he replaced the batteries
- A "hump" in the driveway that did not properly divert water from leaking under the garage door, which the Landlord promised to repair
- A door handle to the main entrance of the rental unit that did not latch properly, which the Landlord promised to repair

- A chimney that the Landlord told her needed cleaning before the fireplace could be used
- Missing baseboards from a closet that the Landlord promised to install
- A missing closet door in one of the bedrooms that the Landlord promised to install
- Failure to provide a new stove that was promised at the start of the tenancy.

The Landlord stated:

- That he did not tell the Tenant he would replace the batteries in the light under the stairs, as the light was working at the start of the tenancy
- That he informed the Tenant that water ran into the garage from the driveway at the start of the tenancy and he did not promise to divert the water
- That the door handle to the main entrance of the rental unit was loose, but it was functional; that he did promise to repair it; and that he did not repair it prior to the end of the tenancy
- That the chimney did not require cleaning but he did tell the Tenant that she should not use the fireplace as her children were at risk of being burned
- That he did not know there were missing baseboards in a closet prior to the start of these proceedings and he did not promise to install them
- That he offered to install a missing closet door in one of the bedrooms but the Tenant declined the offer
- That he did not promise a new stove.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, because the Landlord told her to get rid of her 3 gerbils. She acknowledged that she did not have permission to keep gerbils in the rental unit. She stated that she asked for, and obtained, permission to keep a cat. The Landlord agreed that he asked her to get rid of 3 Australian rodents, as she did not have permission to keep any pets in the rental unit, other than a cat.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, because she is being disturbed by the occupants of the upper rental unit. The Tenant stated that on April 12, 2014 new occupants moved into the upper rental unit. She stated that she was disturbed by their noise and because they used an excessive amount of hot water. The Landlord and the Tenant agree that the Landlord was aware of her concerns with the new occupants.

The Landlord stated that he spoke with the occupants of the upper rental unit about the Tenant's concerns and they also reported concerns with noise from the Tenant's suite, although they report never having a problem with hot water. The Landlord submitted a letter from the occupant of the upper rental unit, in which the occupant stated that she delayed washing her dishes out of respect for the Tenant's concerns about hot water.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, because she was disturbed by the Landlord making repairs between approximately 8:15 p.m. and

9:00 p.m. on April 11, 2014. She stated that she did authorize him to enter her rental unit for the purposes of the repairs but only because she felt obligated to comply with his request.

The Landlord agreed that he asked the Tenant for permission to enter her rental unit for the purposes of repairing some drywall. He stated that she did not initially want him to enter but she did so after he promised the repairs would not take long.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, because when the Landlord served her with the Ten Day Notice to End Tenancy he yelled at her, threatened to contact her church; and threatened to inform her ex-husband of her location. The Landlord acknowledged that they did argue when the Notice to End Tenancy was served but he did not threaten to report her to anyone or to inform her husband of her location.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$800.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord, even if the Landlord breaches the *Act* or a term of the tenancy agreement.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due on May 01, 2014 and that rent for May is still outstanding. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$800.00 in outstanding rent for May.

I find that it was reasonable for the Landlord to conclude that the rental unit would not be vacated by June 01, 2014 when he received notice from the Tenant that she had applied for more time to cancel the Notice to End Tenancy and that a hearing had been scheduled for June 25, 2014. I therefore find that it was reasonable for him not to advertise the rental unit for June 01, 2014 at that point in time.

Section 7 of the *Act* requires a party who is seeking compensation for damage or loss to take reasonable steps to minimize that damage or loss. In an effort to mitigate the potential loss of revenue for June of 2014, I find that the Landlord should have advertised the rental unit as soon as he became aware that the Tenant had vacated the rental unit. As he stated that he was aware the rental unit was vacant on May 27, 2014 and he did not advertise it until June 15, 2014, I find that he did not take reasonable steps to mitigate the lost revenue he experienced. I therefore dismiss his claim for compensation for lost revenue from June of 2014.

On the basis of the undisputed evidence I find that the pedestal sink was secured to the wall with drywall anchors, rather than being secured to a stud in the wall. I find it reasonable to expect that a small child will lean or hang on a sink in an effort to use the sink and I find it likely that the sink would not have become detached from the wall if it

had been secured to a stud. I therefore find that the damage to the sink was due, at least in part, to a deficiency with the installation and I dismiss the Landlord's claim for repairing the sink.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant did not change the locks to the rental unit. As the locks were not changed, I dismiss the Landlord's claim for changing the locks. I find that it would have been prudent for the Landlord to check if the locks actually needed changing, in spite of what he had been told by the Tenant, before he incurred the expense of changing the lock.

As the Tenant agreed that she was obligated to pay \$97.36 of the hydro and gas bills that were submitted in evidence, I find that she owes this amount to the Landlord. I find it reasonable for the Tenant to want to view a hydro or gas bill before she pays any portion of the bill. As the Landlord has not yet provided the Tenant with any more recent utility bills, I find his claim for payment of hydro expenses from May and June is premature. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for those costs if they parties do not settle that matter.

I find that the Landlord's Application for Dispute Resolution has merit and that the Tenant must compensate the Landlord for the \$50.00 it cost to file this Application. I find that the Tenant is not obligated to compensate the Landlord for any additional filing fees that were charged by the Residential Tenancy Branch. The Tenant is not responsible for compensating the Landlord for an overpayment arising from an administrative error over which she had no control.

With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for the time and expense of participating in these proceedings.

The *Act* does not grant a landlord the same right to quiet enjoyment as it grants to a tenant. I therefore dismiss the Landlord's claim for compensation for "stress" arising out of this tenancy or these proceedings.

The burden of proving the Landlord breached the Tenant's right to the quiet enjoyment of the rental unit rests with the Landlord. I find that the Tenant has submitted insufficient evidence to show that her right to the quiet enjoyment of the rental unit was breached when the Landlord failed to repair deficiencies with the rental unit that he promised to repair.

In reaching this conclusion I was influenced, in part, by the absence of evidence that corroborates the Tenant's testimony that the Landlord to add batteries to the light under the stairs, to divert water from the garage, to clean the chimney, to replace missing baseboards, to install a closet door, and to provide a new stove. As the Landlord

denies that the repairs were promised and/or necessary, I find that the Tenant has failed to establish that the Landlord was obligated to make the repairs.

On the basis of the undisputed evidence, I find that the Landlord did fail to repair a door handle, which he promised to repair. I find that this deficiency is relatively minor and, as such, the Tenant is not entitled to compensation for this minor deficiency during this tenancy that lasted less than three months.

I find that it was reasonable for the Landlord to ask the Tenant to get rid of three rodents/gerbils, as she had not obtained permission to have those pets. Given that the Tenant understood that she needed permission to keep a cat in the rental unit I find that she knew, or should have known, that she needed permission to keep gerbils or rodents in the rental unit. As the Landlord's request to remove the animals was reasonable, I find that the Tenant is not entitled to compensation for being asked to get rid of them.

Conflict between two parties sharing a residential complex is not uncommon and, in many cases, is not preventable by a landlord. A landlord does have an obligation to investigate a tenant's concerns and, if warranted, to take reasonable steps to address those concerns. I find that the Landlord acted reasonably in response to the Tenant's concerns about hot water and noise by speaking with the occupant of the upper rental unit.

In the event a landlord's intervention does not successfully resolve unreasonable disturbances, a landlord may be obligated to end a tenancy of a party that is acting unreasonably. In these circumstances, the Tenant vacated this rental unit before the Landlord determined whether he could resolve the conflict between the parties. As the Landlord acted reasonably in response to the Tenant's concerns, I find that the Tenant is not entitled to compensation for any disturbances caused by the occupants of the upper unit.

In reaching this conclusion I was influenced, to some degree, by the fact running out of hot water when parties share a hot water tank is not uncommon, and can often be resolved with a reasonable amount of cooperation between the parties. In these circumstances there is no evidence to show that the occupants of the upper rental unit were not attempting to cooperate with the Tenant in regard to the hot water.

As the Tenant gave the Landlord permission to enter her rental unit on April 11, 2014 for the purposes of making repairs, even if she did not really want him there, I find that she is not entitled to compensation for this disturbance.

The Tenant is basing this claim for compensation, in part, on the timing of the repair on April 11, 2014. She contends that making repairs between 8:15 p.m. and 9:00 p.m. is unreasonable. Given that section 29 of the *Act* allows a landlord to enter a rental unit between 8:00 a.m. and 9:00 p.m., with proper notice, I cannot conclude that this is an unreasonable time to access a rental unit.

I find that the Tenant submitted insufficient evidence to establish that the Landlord acted inappropriately when he served the Tenant with a Notice to End Tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Landlord made threats during this conversation or that refutes the Landlord's testimony that no threats were made. I therefore find that the Tenant is not entitled to compensation for this incident.

I note that the Tenant outlined additional incidents in her written submission which she did not raise at the hearing. As the issues were not raised at the hearing and the Landlord was not given the opportunity to respond to the allegations, I have not considered those issues when determining this matter.

The Tenant has failed to establish that she is entitled to compensation for the loss of the quiet enjoyment of her rental unit. I find that she was required to move because she did not pay her rent and that she therefore is not entitled to compensation for the cost of moving.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$947.36, which is comprised of \$800.00 in unpaid rent, \$97.36 in unpaid utilities, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$200.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$747.36. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: June 27, 2014

Residential Tenancy Branch

