



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF, O
 MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning 2 separate applications made by the tenant. In the first application the tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application. In the second application the tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee.

The landlord and the tenant attended the hearing and the tenant applied to adjourn the proceedings. The tenant advised that the landlord had not been served with the evidentiary material that the tenant had provided to the Residential Tenancy Branch because the tenant did not know the landlord's address and the tenant received evidence from a utility company at a late date, and subsequently was not able to serve the landlord within the time required. The landlord did not agree to an adjournment.

The Rules of Procedure require an applicant to provide evidence to the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. If it is not provided to the respondent, the Arbitrator has the discretion to consider it if the applicant shows that it is new and relevant and was not available at the time the application was filed or other evidence was served, provided that the acceptance of the late evidence does not unreasonably prejudice the other party. If I were to accept the evidence, the respondent must be given an opportunity to review it, and Rules 6.3 and 6.4 must be applied, which deal with the question of adjourning the proceeding.

In this case, the tenant has not provided the landlord with the evidence and stated that the landlord's address was not known until November 18, 2014 and applies to adjourn

in order to serve the documentation. The landlord argued that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property which contained the landlord's address, and the tenant moved out at the end of November, 2014.

In the circumstances, I find that the tenant has not provided evidence as required, and I find that the landlord would be prejudiced by an adjournment. The tenant's applications were filed on October 28, 2014 and November 13, 2014, and aside from the evidence that is new, I accept that the tenant had an address for the landlord on the 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant's application to adjourn the hearing was denied. The hearing commenced and each party gave affirmed testimony. None of the evidentiary material of the tenant is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and more specifically for:
 - overpayment of utilities; and
 - loss of power during the tenancy?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit and security deposit?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2011 and ended on November 29, 2014. No written tenancy agreement exists, however rent in the amount of \$1,350.00 per month was payable on the 1st day of each month. In August, 2011 the landlord collected a security deposit from the tenant in the amount of \$675.00 as well as a pet damage deposit in the amount of \$150.00, and both deposits are still held in trust by the landlord. The tenant has not provided the landlord with a forwarding address in writing since moving out.

The tenant also testified that at the commencement of the tenancy the parties agreed that the tenant would pay one third of the gas and electricity bills, which were in the tenant's name, and the tenant would provide a copy of the bill to the landlord and deduct one third of the utilities from the rent. However, the landlord decided that he didn't want to pay the utilities anymore and lowered the rent by \$50.00 per month in

January, 2012. The garage on the rental property has also been rented out by the landlord, and the utilities cover power in that garage.

During the last week of July or the beginning of August, 2014 the power went off. That had happened since the beginning of the tenancy, but this time it didn't go back on. The tenant had no power for 2 ½ months so called the BC Safety Authority and the landlord finally did something. The landlord investigated, and then brought in another fellow and they changed a switch, but the power still didn't work. On October 30, 2014 the landlord called an electrician who fixed the problem.

The tenant explained that the first application claims \$1,625.00 for no electricity, which was filed prior to the power being repaired, and for the 10 weeks prior to the repair, the claim is half the rent. The tenant used a calculation of half rent, divided by 4 weeks and multiplied by 10 weeks.

The second application claims \$4,539.44, which includes return of the security deposit and pet damage deposit as well as recovery of the utilities paid in the amount of \$3,714.44 after discounting the tenant's share under the original tenancy agreement, and after discounting \$1,200.00 paid to the tenant by tenants in the lower level of the rental complex, who paid out of the goodness of their hearts. The tenant started to pay 100% of the utilities at the end of January, 2012 and added the electricity bills to \$5,901.76. The tenant calculated one third as the tenant's portion, or \$1,967.25, \$1,200.00 was paid by other tenants, and the tenant has over-paid \$2,734.51 which the tenant claims against the landlord. The bill for November has still not been received.

The landlord testified that if the tenant wasn't happy with the agreement, she stayed there for 3 years. The rent was dropped for her and the tenants in the lower level. The landlord also spent \$400.00 on an electrician who was at the rental unit 3 times. The landlord attempted to correct the electrical problem by tripping the breaker and it would work for awhile. The tenant's daughter told the landlord that she had kicked a ball which hit the bedroom light and broke it. The tenant was not totally without power and ran an extension cord. The tenant had lights but didn't tell the landlord that no plugs in the hallway worked. All of the hall plugs connected to the bedroom. The landlord took off the light fixture and it had power inside but the fixture shorted out and the landlord didn't know. He was there at least 8 times and so were 2 electricians around August and October. The power worked intermittently in between those dates. There was never a hazard.

The landlord further testified that the parties had agreed that the tenant would pay one third of the utilities and then the landlord changed it because the landlord reduced rent by \$50.00 per month for each of the 2 rental units and the tenants in the lower level paid

the tenant. No notice was given to the tenants to remove the utility, but the tenant agreed.

The landlord also testified that the landlord uses the garage, but not much, perhaps 5 times per month roughly. The fireplace in the rental unit and the furnace run on gas, but nothing in the garage does. The tenant left lights on all the time. The agreement was made in the spring or summer of 2012, and the landlord was concerned that because the tenant isn't a very good tenant and might move out and leave the landlord to pay the utilities. The landlord was away for awhile and then hurt his arm and was unable to do the repairs sooner or the maintenance that he normally does.

During cross examination, the landlord testified that he works in the garage on the rental property on his cars and motor bike, and has allowed others to use it as well. The landlord has electrical cords to a trailer, dehumidifiers and heaters.

Analysis

Firstly, the *Residential Tenancy Act* requires a landlord to provide a tenant with at least 30 days written notice in the approved form if a landlord intends to reduce services or facilities, unless the tenant has agreed in writing, and the landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the service. In this case, there is no evidence that the landlord gave any written notice, the tenant did not agree in writing, and I am not satisfied that the landlord has reduced the rent by the equivalent amount. Further, a landlord cannot require a tenant to pay utilities for another rental unit, or for the garage that the landlord uses, rents to other people, or allows others to use. The *Act* states that a party who fails to comply with the *Act* or the tenancy agreement must compensate the other party for damage or loss that results from that failure.

The tenant testified that the utility bills paid by the tenant equalled \$5,901.76 from January, 2012 to October 31, 2014 and the tenant collected \$1,200.00 from the tenants in the lower level. The landlord did not dispute that testimony, and when compared to the application of the tenant and the documentary evidence, I accept that. The tenant's portion is one third, or \$1,967.25, and subtracting that and the \$1,200.00 paid to the tenant, I find that the tenant is entitled to monetary compensation from the landlord for the balance of \$2,734.51. However, I also find that the tenant has recovered \$1,700.00 by way of a rent reduction of \$50.00 per month from January, 2012 to November, 2014, which reduces the tenant's monetary compensation to \$1,034.51. I also order that the tenant's claim for future bills received are not claimable at a later date, since the tenant has made this claim for utilities.

With respect to the security deposit, the *Act* states that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to either return it in full or file a claim against it. In this case, the tenant has not provided the landlord with a forwarding address in writing, and therefore, I find that the application is premature, and I dismiss it with leave to reapply.

With respect to the tenant's application for monetary compensation for having no power in the rental unit, I find that the tenant's testimony was not entirely correct. The tenant did not dispute the landlord's testimony that the tenant did have some power and used extension cords. However, I also find that the landlord's failure to make the repairs is contrary to the *Act*. I find that the tenant's calculation for such failure is excessive considering the tenant had power, and I reduce the claim to \$270.00 being 10% for 8 weeks as opposed to the tenant's application for 50% for 10 weeks, allowing the landlord 2 weeks for the time I find it ought to have taken to correct the problem.

Since the tenant has been partially successful with the applications, the tenant is also entitled to recovery of the \$100.00 filing fees.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for return of the security deposit and pet damage deposit is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act*, in the amount of \$1,404.51.

This order is final and binding and may be enforced.

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 10, 2014

Residential Tenancy Branch

