



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0931396 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, MND, MNR, MNSD, O, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for unpaid rent, damage to the unit and loss as a result of the tenancy pursuant to section 67 as well as recovery of her filing fee pursuant to section 72 of the *Act*. The tenant originally applied to cancel a notice to end tenancy and for a monetary order for compensation for damage or loss as a result of the tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed that they had received the Application for Dispute Resolution package from the other party. Both parties testified that the tenant had vacated the rental unit on or about April 10, 2015. Therefore, the tenant sought to withdraw her application to cancel the notice to end tenancy.

Issues to be decided

Is the landlord entitled to a monetary award for unpaid rent, damage or losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for damage or loss arising out of this tenancy?

Background and Evidence

This tenancy began on February 1, 2013 for a term of two months and continued with subsequent fixed term tenancies. The rental amount of \$800.00 was payable on the first

of each month. The landlord testified that she continues to hold a \$400.00 security deposit paid by the tenant on February 1, 2013 and a \$250.00 pet damage deposit paid by the tenant on January 15, 2014. Both parties testified that the tenant has vacated the rental unit.

There have been previous Residential Tenancy Branch Hearings with respect to this tenancy. On November 25, 2013, the tenant and landlord entered into a settlement agreement with the assistance of an Arbitrator during a Residential Tenancy Dispute Resolution Hearing. At that time, it was agreed that the tenancy would end on January 31, 2014. Other provisions were made to resolve the residential dispute. At this hearing, the parties testified that the tenant continued her tenancy after January 31, 2014. In November 2014, the landlord applied for and was granted an Order of Possession and Monetary Order for Unpaid Rent with respect to this tenancy. The tenant remained in the rental unit and, on February 27, 2015, the landlord applied through the Direct Request process for an Order of Possession and Monetary Order for Unpaid Rent. That application was granted.

As a result of the February 27, 2015 decision granting the landlord an Order of Possession and Monetary Order, the tenant applied to the Residential Tenancy Branch for a review of that decision. The tenant filed her application late and the application was ultimately dismissed without leave to re-apply on March 26, 2015.

The landlord testified that, as a result of this tenancy, the landlord incurred costs including; cleaning of the rental unit; the tenant's use of the residential premises after the tenancy ended ("over holding") with no rental payment; as well as the cost of court and bailiff services to evict the tenant. The landlord testified that no condition inspection report was prepared or provided to the tenant at the end of this tenancy. The landlord testified that the tenant did not pay rent on March 1, 2015 as required by the tenancy agreement and the *Residential Tenancy Act*.

The landlord testified that, as the date of this hearing, the tenant had paid \$600.00 towards March 2015 rent and no rental amount in April 2015, leaving a balance of \$1000.00 outstanding in rental arrears. The landlord submitted copies of two utility bills in the amount of \$592.12 and \$443.65. The landlord testified that she handwrote on the bills and provided them to the tenant, indicating her portion (half) as \$296.01 and \$221.82 respectively.

The landlord sought a monetary order as follows;

Item	Amount
BC Hydro bills unpaid, <i>estimated by landlord</i>	\$547.71
Bailiff Invoice and Court Filing Fees (\$224.05+ \$80.00)	304.05
Tenant continued Occupancy - March (\$200.00) - April (\$800.00)	1000.00
Cleaning and Repairs/Damage	586.60
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought by Landlord	\$2488.36

The tenant testified that she was not able to fully enjoy her property or have the privacy she expected as a part of the tenancy because the landlord left more than one vehicle parked on the back of the residential premises when she was living there. She testified that the landlord parked a motor boat outside of her rental unit for a period of approximately two months. She testified that, during this time, she was inconvenienced but also she was concerned for her son's safety. She did not allow her son to play in the backyard as a portion of the boat's motor and attached propeller was often left out and exposed. The tenant testified that, after the boat was gone, the landlord parked a motor home outside of her rental unit. She testified that she was very uncomfortable with the motor home on the property because people would visit or spend the night in it from time to time. She testified that she lacked privacy in that both vehicles, but particularly the motor home had a view of one of her windows so she kept her curtains drawn at all times.

The tenant testified that her car was towed by the landlord. She testified that she believes the landlord repainted the numbers on the parking stalls so that she would be towed. The landlord testified that the tenant's car was left out uninsured and that she had been warned that it would be towed if the car did not show valid insurance. The landlord testified that she gave more than one opportunity to the tenant to rectify the situation before she towed the vehicle. The tenant submitted some photographs to suggest that the parking lot numbers had been repainted but no tangible evidence of her allegation against the landlord.

The tenant sought a monetary order as follows;

Item	Amount
"Use of backyard to store camper"	\$1920.00
"Towing of vehicle"	150.00
Total Monetary Order	\$2070.00

Analysis

The tenant sought compensation for damage or loss under the Act, the regulations or the tenancy agreement. She sought \$2070.00. The landlord seeks to recover loss when the tenant stayed after the issuance of an Order of Possession as well as the cost to evict the tenant from the unit; cleaning, repair costs and unpaid utilities in the amount of \$2488.36.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

With respect to the tenant's application, the tenant is required to prove that she suffered a loss as a result of the landlord parking a boat near her home and towing her vehicle. The following provisions of the *Act* regarding a tenant's right to quiet enjoyment would seem to be of relevance to the consideration of this application:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

While the tenant has found her landlord's actions in towing her vehicle upsetting, her discomfort does not raise to the level of interference with the tenant's right to reasonable privacy or freedom from unreasonable disturbance. However, placing a boat and motor home in an area that the tenant testified affected both her privacy and her use of the common areas to allow her son to play requires closer consideration. Residential Tenancy Policy Guideline No. 6 provides that,

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and [he] stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: ...unreasonable and ongoing noise; refusing the tenant access to parts of the rental premises; ... intentionally removing or restricting services... Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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. In this case, the landlord was using a portion of the premises for her own purposes. The landlord acknowledged that the tenant complained about this issue but she took no steps to mitigate or reduce the impact on the tenant. I find there is sufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about the material near her rental unit and on the common part of the residential premises.

I rely on section 65 of the *Act* regarding a breach of *Act*, regulations or tenancy agreement in determining the award for the tenant. I find the landlord has not complied strictly with the *Act* in that the landlord failed to provide privacy within the rental unit, appropriate use of the common areas on the residential premises and freedom from disturbance for the tenant.

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders:

...(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement...

Given all of the circumstances, and the testimony of both parties that the boat remained on the grounds for approximately two months only to be replaced by a motor home that remained on the property for 24 months, and the tenant's description of the impact on her tenancy, I find that the tenant is entitled to compensation for loss of quiet enjoyment. I find the tenant is entitled to a 5% reduction of her monthly rent for a total of 26 months. (\$1040.00)

The landlord has provided undisputed testimony that the tenant remained in the rental unit for the months of March and April 2015 without paying a rental amount and after being provided with the landlord's Order of Possession. The landlord has provided documentary evidence that shows that she paid a court fee of \$80.00 and a bailiff fee of \$220.05 to ensure the tenant vacated the rental unit April 10, 2015, I find that the landlord is entitled to recover the costs of having the tenant removed totalling \$300.05 as the loss of the equivalent of two months' rent as the tenant remained in the unit and failed to pay rent (\$1000.00).

The landlord also submitted photographs to document the state of the residence when the tenant vacated. The photographs show some dirt and debris left behind as well as some personal items of the tenants. One photograph is unclear. The landlord testified that it represents a carpet stain. I note that, while the landlord provided a copy of a condition inspection report, the report is only completed and signed by both parties at move-in; the move-out report is not completed. The landlord testified that she did not create a report for move-out as the tenant did not attend. Further, she did not provide the tenant with a copy of any report at move-out.

With respect to cleaning and repair costs, the tenant submitted a typed list of actions taken to clean the unit after the tenant vacated. She provided handwritten receipts indicating she paid a total of \$515.00 to five individuals to clean and repair the rental unit. She testified that one of those receipts was made out to her husband for his efforts in removing rubbish and repairs. She explained in her testimony that her company owns the rental unit and she ensures that she pays anyone who provides labour with respect to the property. The landlord did not provide a receipt for replacement blinds or for landfill fees. Given that these receipts include payments to a family member who did not testify at the hearing and that the receipts are handwritten with no further accounting, I find the landlord is not entitled to recover payment for her husband's labour. I find the landlord is also not entitled to full reimbursement for the four other receipts provided. On

review of the evidence submitted, I find that the cost to clean must be more reasonable in consideration of factors including the length of the tenancy. I find the landlord is entitled to compensation for reasonable expense in clean-up of the residence, based on the photographs provided. I note that the photographs reflect a moderate level of cleaning required I find the landlord is entitled to \$386.25, 75% of the receipts provided for the four labourers.

The landlord provided invoices for utilities and sought compensation in the amount of \$445.87 toward the utility bills from the tenant. The tenant disputed any responsibility for these bills and, further, there is no commentary in the tenancy agreement as to whether the tenant has a responsibility towards utilities. I find that there is insufficient proof by the landlord that the tenant is responsible for these utility bill amounts. Therefore, I find the landlord is not entitled to compensation for utility bills.

The landlord testified that she continues to retain the tenant's deposits in the amount of \$400.00 from February 1, 2013 and \$250.00 from January 15, 2014. I note that there is no interest payable over the period of time the landlord has held these deposits. Pursuant to the landlord's application, I find the landlord is entitled to retain the tenant's deposits totalling \$650.00 towards a monetary award issued to the landlord.

Item	Amount
Bailiff Invoice and Court Filing Fees (\$224.05+ \$80.00)	\$304.05
Tenant continued Occupancy - March 2015 (\$200.00) - April 2015 (\$800.00)	1000.00
Cleaning and Repairs/Damage	386.25
Tenant's compensation for loss of QE	-1040.00
Security and Pet Damage Deposits	-650.00
Total Difference Between Amount owed to Landlord and Amount owed to Tenant	\$0.30

As both parties were partially successful in this application, I find that neither party is entitled to recover the filing fee paid for this application.

As the amount of difference between the monetary amount owed to each party is thirty cents, I decline to issue a monetary order in this amount.

Conclusion

I find the landlord is entitled to a monetary amount of \$1690.30.

I find the tenant is entitled to a monetary amount of \$1690.00.

As the difference between these two amounts is 30 cents, I decline to issue any monetary order.

Item	Amount
Bailiff Invoice and Court Filing Fees (\$224.05+ \$80.00)	\$304.05
Tenant continued Occupancy - March 2015 - April 2015	1000.00
Cleaning and Repairs/Damage	386.25
Tenant's compensation for loss of QE	-1040.00
Security and Pet Damage Deposits	-650.00
	\$0.30

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: May 29, 2015

Residential Tenancy Branch

