



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, RR, FF

Introduction

This hearing dealt with applications from both the landlord and one of the tenants under the *Residential Tenancy Act* (“the *Act*”). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

One of the tenants, Tenant MG applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (“the 10 Day Notice”) pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties (the landlord and the applicant tenant, Tenant MG) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant MG testified that her daughter is her co-tenant and she would be representing the daughter’s interests as a respondent at the hearing as well as her own.

Tenant MG confirmed the receipt of the 10 Day Notice on behalf of herself and her co-tenant. Tenant MG confirmed receipt of the dispute resolution package on behalf of both tenants on April 8, 2015. The landlord confirmed receipt of the tenant’s package personally served personally to her on April 7, 2015. Based on the testimony of the parties and pursuant to section 88 and 89 of the *Act*, I find the tenants duly served with the 10 Day Notice and the landlord’s Application for Dispute Resolution. Further, I find the landlord duly served with the tenants’ Application for Dispute Resolution.

As the tenants had vacated the rental unit by the date of this hearing, the landlord withdrew her application for an Order of Possession and the tenant withdrew her application to cancel the notice to end tenancy.

Preliminary Issue: Admission of Tenant's Digital Evidence

The tenant submitted a compact disc as part of her evidence package. That disc was submitted on April 23, 2015. The tenant testified that it was provided to the landlord shortly after the disc was submitted to the Residential Tenancy Branch. She was unable to advise as to the exact date that the disc was provided to the landlord. She further submitted that the disc contained photographs of the unit when she first moved in, when she painted the unit and when she left the rental unit. She testified that the disc also contained text messages, emails and a voice recording. The landlord acknowledged receipt of the digital evidentiary materials.

Residential Tenancy Dispute Resolution Rules of Procedure Rule 3.10 addresses the admission and use at a hearing of digital evidence and is relevant in this matter.

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

With respect to the text messages that the tenant has included in her materials, I find that these cannot be admitted as evidence based on the format in which they were submitted as evidence and in consideration of the Dispute Resolution Rules of Procedure.

With respect to digital evidence, Rule 3.10 also provides that,

Digital evidence must be accompanied by a printed description, including:

- a table of contents
- identification of photographs, such as a logical number system
- a statement for each digital file describing its contents
- a time code for the key point in each audio or video recording, and
- a statement as to the significance of each digital file.

While the tenant did not provide a table of contents, she identified clearly on the disc the photographs to be considered. She placed them in named folders and provided a description of each photograph as the name of that photograph within the folders. The Rule 3.10 also directs that,

The submission and service of digital evidence must meet the time requirements for filing and service established in Rule 3.1, 3.2, 3.14 and Rule 3.15.

In these circumstances, the tenant made efforts to provide the material in a clear and accessible way. While the tenant did not provide the materials 14 days prior to hearing as required by the *Act*, the landlord confirmed receipt of the materials and did not dispute the accessibility of the materials. The tenant complied with the spirit of the Rules of Procedure providing a description of the materials on the disc itself and providing the evidence, in her own submissions, as soon as practicable. Given all of these factors, for the purposes of a full, effective and fair hearing, I find that the tenant's photographic digital evidence is admissible for consideration at this hearing. However, in consideration of Rule 3.10, I find that the materials that could have been provided in paper format, specifically the text messages submitted, are not admissible for this hearing.

I note, on review of the digital evidence, I was unable to access the digital voice recording submitted. I advised the tenant that I was unable to consider this evidence, pursuant to the Rules of Procedure regarding digital evidence due to my lack of ability to access the recording.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to an order authorizing her to retain all or a portion of the tenants' security deposit?

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

Is Tenant MG entitled to an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided during the course of their tenancy?

Is Tenant MG entitled to recover the filing fee for her application?

Background and Evidence

This tenancy began on March 1, 2013 as a fixed term tenancy. After one year, the tenancy continued on a month to month basis. The rental amount was \$1400.00 payable on the first of each month. The landlord testified that she continues to hold a

security deposit in the amount of \$700.00 paid by the tenant on February 17, 2013. Both parties testified that the tenants vacated the rental unit as of April 10, 2015. The landlord sought to retain the tenants' security deposit.

The tenant sought an order to retroactively reduce her rent. Though the tenant no longer resides in the rental unit, she submitted that, over the course of her tenancy, she was not provided with services or facilities that were agreed upon by the landlord. She submitted that the rental unit was not safe and that the landlords should have compensated her for work done to improve the condition of the rental unit.

The landlord testified that, at the start of the tenancy, Tenant MG was very eager to move in. The landlord stated that Tenant MG said she would "deal with the house as my own" and offered to do painting within the rental unit. The landlord testified that she agreed to reimburse Tenant MG for the cost of the paint and, on receiving receipts, the landlord compensated Tenant MG for approximately \$65.00 (the cost of paint and materials).

The landlord testified that, over the course of the tenancy, Tenant MG made a multitude of requests. The landlord also testified that, because of Tenant MG's comments that she would treat the unit as her own home, the landlord both reduced her rent from the original advertised price and attended to all of her requests. The landlord stated that Tenant MG requested the following items within the residence be upgraded and the landlord met all of those requests;

- installation of a new dishwasher;
- complete renovation of the kitchen;
- replacement of many of the light fixtures;
- replacement of the stove;
- replacement of the sliding glass door in the back of the unit and adding a keyed lock so the tenant could come and go through that door; and
- professional painting in areas the tenant did not paint herself.

The landlord testified that, when they hired tradespeople to undertake work within the rental unit, Tenant MG was very difficult to deal with and would often deny the landlords entry to direct the tradespeople in their work.

Tenant MG testified that, when she moved into the rental unit, there were several large and small holes in the walls, the kitchen was in disrepair and the unit needed to be painted. She testified that, when she viewed the unit originally, she did not see the holes in the walls. The landlord testified that Tenant MG viewed the rental unit when it was

vacant. Tenant MG testified that she repaired many holes in the walls herself and then painted most of the residence over the course of her tenancy. She confirmed that the landlords paid for her costs in paint and materials but testified that she wanted to be compensated for her time and labour in painting the rental unit. She estimates her labour at \$10.00 per hour and her time at approximately 20 hours.

Tenant MG testified that when the landlord's son came to collect the April rent, she told the landlord's son that she wanted to be compensated for her time and labour in repairing the walls and painting. She testified that she also told the landlord's son that she wanted to be compensated for having to reside in an unsafe premise with unfit electrical wiring. Tenant MG testified that the rental unit was unsafe because the smoke alarms were not in working order within the unit and she testified that the landlords were provided with instructions to upgrade their wiring by the municipality. Tenant MG testified that, for these reasons, she wanted to speak directly to the landlords and discuss a reduction in her rent. She testified that the landlord's son advised he would pass along her request. She testified that her next contact with the landlords was delivery of a 10 Day Notice to End Tenancy. Tenant MG testified that she and her co-tenant vacated the rental unit on or about April 10, 2015. She testified that she kept April 2015 rent to compensate for her work within the rental unit and so that she could afford to move out. She testified that she told the landlords to keep her security deposit.

Both parties agreed that a walk through condition inspection was done at the start of the tenancy. No copy of a condition inspection report was submitted at this hearing by either party. The tenant testified that the residence was messy at the start of the tenancy. She suggested that there was both dirt and debris within the unit that she was forced to address on move-in. The tenant also submitted that there were a multitude of holes throughout the rental unit that she repaired herself prior to re-painting the unit.

The landlord testified that the rental unit had been cleaned prior to the tenant's move-in and that it was in good condition for a new tenant. The landlord testified that the residential premises were approximately 25 years old and that the rental unit had been painted in the summer of 2012. The landlord testified that Tenant MG's painting work was poor and would have to be redone.

The landlord acknowledged that minor wiring upgrades were required by the municipality but that they were undertaken swiftly and were within code during the course of the tenancy.

The monetary amount of \$2860.00 sought by the landlords reflects \$1430.00 for April 2015 rent. The landlord testified that the tenant did not pay rent in April 2015. The tenant

confirmed in her testimony that she did not pay rent in April 2015 as she required the money for other purposes. The landlord also sought rental loss of one month's rent (\$1430.00) for May 2015 testifying that they were unable to re-rent for May 1, 2015. The landlords provided little information to indicate what efforts they made to re-rent the unit before May 1, 2015. The landlords also sought to recover the filing fee for their application.

Analysis - Tenant's Application for Rent Reduction

In considering the tenants' application for monetary compensation for rent reduction, I note that, under section 27(1) of the *Act*, a landlord may terminate or restrict a service or facility if the landlord also reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. However, based on the evidence provided at this hearing, I do not find that the tenant has shown the landlord failed to provide a service or facility that had been agreed upon during this tenancy.

The landlord met the tenant's requests with respect to upgrading the kitchen; installing a new dishwasher; completed a kitchen renovation at the request of the tenant; upgraded and replaced light fixtures and a stove in the kitchen; as well as placing a lock on a sliding door and providing reimbursement for paint purchased by the tenant. Given all the requests that the landlords met and their ongoing discussions with the tenant with respect to the rental unit over the period of approximate two year tenancy, I find it unlikely that they would have failed to pay for the tenant's time in painting if that was in fact their agreement with her. I note that the landlord did compensate the tenant for her paint costs acknowledging she had agreed to do so.

The testimony of the landlord was that the rental unit was painted in 2012. The Residential Tenancy Policy Guideline No. 40 provides the average "useful life" for exterior and interior parts of a rental unit residence. The guideline states that interior walls require painting every four years. The tenant chose to spend her time in painting in the colours of her choice throughout the rental unit. I accept the landlord's testimony that the residence had been painted within a year prior to the tenant's move-in and that her extra efforts were of her own volition. I do not find the tenant is entitled to further compensation for her painting efforts.

The tenant provided some evidence and sworn, undisputed testimony that there was an electrical issue at the premises. The landlord also acknowledged the validity of this testimony by the tenant, testifying that, when the issue was brought to their attention by the local authorities, they addressed it immediately. As further proof, the landlord

provided undisputed testimony that they hired a contractor to resolve the electrical issue and they testified that the issue was addressed to the satisfaction of the authorities within a reasonable period of time. While I understand the tenant's concern with respect to this safety issue, I find it was appropriately addressed by the landlord when they became aware of the issue as is their obligation under the *Act*.

I do not find that the Tenant MG has proved that she incurred a specific monetary loss or loss of facility during this tenancy that requires compensation pursuant to section 65 of the *Act*. I find the tenants are not entitled to a rent reduction in these circumstances. As Tenant MG was unsuccessful in her application, I find that she is not entitled to recover her filing fee for this application.

Analysis - Landlord's Application for Monetary Award

The landlord sought a monetary award pursuant to section 67 of the *Act*. Under this section, 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. In this case, the landlord must prove the existence of the damage or 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.

The landlord testified and the tenant confirmed that she did not pay rent for April 2015 although she resided in the unit for at least a portion of that month. The tenant did not dispute the testimony that the landlord was unable to re-rent the premises immediately however the landlord is required. Section 7(2) of the *Act* requires a landlord to show that they were active in taking steps to re-rent and mitigate any rental loss. I do not find that the landlords have met their burden in mitigating the landlord's exposure to loss of rent for May 2015 by showing what efforts were made to re-rent the premises for May 2015 after the tenants had vacated.

Given that the tenant provided testimony that she vacated the rental unit on April 10, 2015 and that the tenant's testimony was undisputed, I find it appropriate that she is responsible for April 2015 rent. I do not find, based on the lack of evidence of efforts to re-rent provided by the landlords, that is the tenants are responsible to compensate the landlords for rental loss in May 2015. I note that the landlord had a significant amount of time in the month of April to both do any cleaning or repairs to the unit as well as advertise to re-rent.

I find the landlord is entitled to \$1430.00 for April 2015 rent. I find that, pursuant to section 72(2) of the *Act*, the landlord is entitled to retain the tenants' security deposit to satisfy a portion of this amount. There is no interest payable for the period the landlord held the tenant's security deposit.

As the landlord was successful in part of their application, I find that the landlord is entitled to recover the \$50.00 filing fee.

Conclusion

The landlord withdrew the application for an Order of Possession.
Tenant MG withdrew her application to cancel the Notice to End Tenancy.

I dismiss Tenant MG's application for an order to reduce her rent and her application to recover her filing fee.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for April 2015	\$1430.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$780.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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

