



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNSD, MNDC, MNR, FF
For the tenant: MNSD, MNDC

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The tenant applied for a return of her security deposit and a monetary order for money owed or compensation for damage or loss.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other's evidence.

At the outset of the hearing, neither party, with one exception, raised any issues regarding service of the applications or the evidence. The landlord denied receiving the tenant's additional 3 pages of typewritten submissions explaining the tenant's claim. The tenant was allowed to testify from those pages. I later determined that I could make a decision on the parties' other oral and written evidence, and it was not necessary to adjourn the hearing for exchange of evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?
2. Is the tenant entitled to a return of her security deposit and further monetary compensation?

Background and Evidence

There was no written tenancy agreement with this tenancy. I heard testimony that this tenancy began on October 2011, ended on April 30, 2014, monthly rent was \$800.00, and the tenant paid a \$400.00 security deposit, which has not been returned by the landlord to the tenant.

The rental unit was described by the landlord as a cottage and by the tenant as a cabana, which was situated on property where the landlord lived in another home.

Landlord's application-

The landlord's listed monetary claim was \$1200.00, comprised of \$800 for unpaid rent for May 2014, and painting the cottage for \$400.00. At the hearing, the landlord stated he was removing his claim for painting, as he misunderstood how to claim against the security deposit, and wanted to pursue only the claim for unpaid rent for May 2014.

The landlord submitted that he first found out on April 25, 2014, that the tenant that was vacating the rental unit at the end of April, and although he advertised the rental unit on a popular website immediately that the rental unit was available, he was unable to find a new tenant for May.

The landlord's relevant documentary evidence included a written submission of their version of events leading to the end of this tenancy, and copies of text message communication between the parties.

Tenant's application-

The tenant's listed monetary claim was \$4872.00, comprised of \$472.00 for movers, \$800.00 for her security deposit of \$400.00, doubled, \$2000.00 for non-pecuniary damages, and \$1600.00 for loss of quiet enjoyment.

As to the tenant's claim for recovery of moving costs, the tenant submitted that due to the landlord's notice of eviction to move out by May 31, 2014, she was forced to move out quickly at the end of April 2014, due to an upcoming knee replacement surgery in May. The move created a hardship as she had not anticipated having to move out that quickly. The tenant referred to a letter by the landlord requesting that she vacate the rental unit, a copy of which was submitted

into evidence by the tenant. The letter was shown to the tenant by the landlord's step-daughter, according to the tenant.

As to her claim for double her security deposit, the tenant submitted that she was entitled to double that amount as the landlord has not returned her security deposit and there were no damages to the rental unit during the tenancy. In response to my question, the tenant confirmed that she had not provided the landlord her written forwarding address.

As to her claim for non-pecuniary losses and loss of quiet enjoyment, which appeared to be correlated in the tenant's application, the tenant submitted that beginning in January 2014, the landlords, including the applicant/landlord's partner, began harassing the tenant about the tenant's partner staying with her in the rental unit. The tenant submitted that the landlord incorrectly used the reason that the septic system was overtaxed, leading to a back-up. The tenant submitted further that any issue with the septic system was due to the landlord's neglect of the system by having regular cleanings as the sewage has backed up before into the rental unit.

The tenant submitted further that her partner stayed only a total of 6 nights in January 2014, 7 in February when they were snowed in for 3 days, and approximately 11 nights in March, not the number of nights claimed by the landlord.

The tenant submitted further that as the landlords wanted her to move due to their demands about her partner by the end of May, she was put into a corner when she learned her knee replacement surgery was being scheduled for May 21, 2014. The tenant submitted that she would need complete care for 3 weeks and would need someone to stay with her and to care of her and her animals. The tenant submitted further that she would need to move quickly as she could not manage for at least 6 months.

The tenant submitted further that the sudden move also was very stressful on her 5 pets, with one dog dying within a few months due to the stress of relocation.

The tenant submitted further that due to the actions of the landlord, she is suffering post-traumatic stress syndrome and major depression, as reflected in the doctor's certificate submitted into evidence.

The tenant submitted further that another issue leading to a loss of her quiet enjoyment was the amount of chicken excrement left on her patio by the landlord's un-fenced chickens, which meant she lost the use of the patio and caused her and her pets to trail in chicken excrement into the rental unit.

The tenant's relevant documentary evidence included copies of text message communication between the parties, written responses to the landlord's evidence, a mover's invoice, and pictures of chicken excrement.

Landlord's response-

The landlord submitted that the tenant's partner began primarily living in the rental unit, as she stayed on average 25 nights a month, a recorded by them. The landlord submitted further the rental unit was designed for only one occupant and that due to the use of the facilities by 2 people, the septic became backed-up. Despite an earlier request to the tenant that her partner not stay in the rental unit, the tenant's partner continued to stay, according to the landlord, resulting in the landlord's request to meet with the tenant again on April 24, 2014.

The landlord submitted that they did want the tenant to vacate, first by the end of June, and then by the end of May, but thought that the April 24 meeting would be to negotiate a settlement. The landlord denied that they were evicting the tenant, but rather, requesting her to vacate.

The landlord submitted that the tenant had previous mental health issues prior to this tenancy.

The landlord denied that the tenant suffered a loss of quiet enjoyment due to the chicken excrement, as she was at fault for feeding the chickens herself. The tenant also benefitted from having fresh eggs.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, the following findings will be made.

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss as required in section 7(2).

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After listening to the testimony and reviewing the relevant documentary and photograph evidence, it appears that neither party is very familiar with their rights and obligations under the Act. I will be addressing those rights and obligations in this Decision.

Landlord's application-

As to the landlord's claim for loss of revenue, incorrectly called unpaid rent, Section 45 (1) of the Act requires a tenant to give written notice to end the month-to-month tenancy at least one clear calendar month before the next rent payment is due.

For the parties' benefit, documents required to be served must be in accordance with section 88 of the Act, and text message communication is not recognized as an acceptable method of delivery of documents.

In the case before me, I find the evidence shows that the tenant failed to provide such written notice to the landlord, and that the landlord did not know the tenant was vacating the rental unit by April 30 until April 25, 2014. However, a landlord has to prove that they have taken reasonable steps to minimize that loss and I find one way in this instance is to immediately start advertising the rental unit, as there was no evidence that the rental unit would not be ready for a new tenant by May 1, 2014.

I find it reasonable that the landlord would not likely have secured another tenant beginning May 1, 2014, due to the lack of written notice, but as the landlord failed to submit proof of the start date, nature and frequency of the advertising I was unable to examine the evidence to ensure that the landlord met their requirement to take reasonable measures to minimize their loss for the entire month of May. I find a reasonable amount to award the landlord in this instance a loss of rent revenue for the first half of May 2014, or \$400.00.

I find the landlord's application had at least partial merit, and I therefore grant him recovery of his filing fee of \$50.00, for a total monetary award of \$450.00.

Tenant's application-

Claim for moving-

As to the tenant's claim for moving expenses, these are choices the tenant made in ending a tenancy, on how to facilitate her moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I also find the tenant was not required to move out by operation of the Act and I therefore dismiss her claim for \$472.00.

Security deposit-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. Section

38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In this case, the tenant confirmed she did not provide the landlord with her written forwarding address, and therefore the tenant is not entitled to receive double her security deposit. The tenant did provide her address to the landlord in her application claiming the security deposit, filed on April 8, 2015, I find this is sufficient notice to the landlord of her forwarding address and I therefore find she is entitled a return of her security deposit of \$400.00.

Non-pecuniary Losses-

The tenant described this claimed loss as psychological and emotional damage as a result of the landlord's attempt to evict her, leading to her sudden departure to ensure that she had a place to stay during recuperation from her knee replacement surgery.

Section 16 of the Residential Tenancy Branch Policy Guideline provides that this is a claim for aggravated damages and are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- *The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.*
- *The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.*
- *They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.*

In the case before me, I find that the tenant has not presented sufficient evidence to show that the loss claim was a foreseeable result of the actions of the landlord. While the tenant did submit a copy of a doctor's report, dated October 7, 2014, showing major depression and post-traumatic stress disorder, I do not find this sufficiently related to her claim here, in light of the fact that the tenant apparently suffered from these conditions prior to the tenancy.

The tenant's claim for \$2000.00 is dismissed.

Loss of quiet enjoyment-

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*.

Pursuant to section 29 of the *Act*, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the *Act* the notice of entry must contain the purpose for entering, which must be reasonable, and provide a specific time and date.

In considering the tenant's claim, I considered that the landlord failed at the inception of the tenancy to provide a written tenancy agreement, as required by section 13(1) of the *Act*. As such, while there was no disagreement as to the amount of monthly rent of the tenant's security deposit, there was no consensus or agreement as to all the rest of the terms and conditions of the tenancy agreement. As such, there were no restrictions placed on the tenant as to having an occupant or overnight guests stay in the rental unit which, if that were the case, would be placed in a written tenancy agreement. The landlord argued that the rental unit was designed for one occupant; however, there was no proof of this submitted or that this was made clear to the tenant as there was not written tenancy agreement.

I find the evidence shows that the landlord began monitoring the activities of the tenant in January 2014, resulting in text message communication to the tenant, finally resulting in their informing the tenant she would have to vacate. While it was upon the tenant to investigate her rights under the *Act* to learn that a landlord may not evict a tenant with text message communication, I do find that the landlord's monitoring to be an invasion of her reasonable privacy. I also find that the landlord's messages to the tenant that she would have to move did unreasonably disturb the tenant, as the landlord was also unaware of his requirements under section 44 of the *Act*, which describes the ways in which a tenancy may end. If the landlord believed he had cause to end the tenancy, he is required to issue a 1 Month Notice to End Tenancy for Cause, on the proper form, prior to seeking the end of the tenancy.

I also find the landlord failed to provide the tenant with a proper notice of entry, through his text message communication. As mentioned earlier, the landlord is required to serve documents to the other party in the methods under section 88 of the *Act*, allowing for 3 day if the document is attached to the tenant's door or 5 days if mailed, pursuant to section 90 of the *Act*.

Taken in totality, it is my finding that the landlord's monitoring of the tenant's activities, their demands that her partner leave the rental unit, their attempt to have the tenant vacate the rental unit without proper notice, and unlawful entry, or attempt at an unlawful entry all led to a loss of the tenant's right to quiet enjoyment.

Section 16 of the Residential Tenancy Branch Policy Guideline states that if a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- *the amount of disruption suffered by the tenant.*
- *the reason for the disruption.*
- *if there was any benefit to the tenant for the disruption.*
- *whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.*

In this case, I find there was no benefit to the tenant or that the landlord made his best efforts to minimize any disruptions.

I find a reasonable amount of compensation to award the tenant for a loss of her quiet enjoyment to be \$150.00 per month, for four months from January through April 2014, as the evidence of the landlord shows the tenant's activities were monitored beginning in January 2014.

I therefore find the tenant is entitled to a monetary award of \$600.00 for loss of quiet enjoyment.

Although the tenant did not specifically claim recovery of her filing fee, I order the landlord to pay the tenant recovery of her filing fee \$50.00 pursuant to section 72(1) of the Act.

Due to the above, I find the tenant is entitled to a total monetary award of \$1050.00, comprised of her security deposit of \$400.00, loss of quiet enjoyment for \$600.00, and her filing fee of \$50.00.

Both applications-

The landlord has been granted a monetary award of \$450.00.

The tenant has been granted a monetary award of \$1050.00.

I offset the landlord's monetary award of \$450.00 from the tenant's monetary award of \$1050.00, and order that the landlord pay the tenant the amount of the balance due in the amount of \$600.00. In that respect, the tenant is granted a monetary order pursuant to section 67 of the Act in the amount of \$600.00 and it is enclosed with her Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court if it becomes necessary. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord is granted a monetary award of \$450.00.

The tenant is granted a monetary award of \$1050.00.

I offset the landlord's monetary award from the tenant's monetary award, and granted the tenant a monetary order for the balance due in the amount of \$600.00.

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 10, 2015

Residential Tenancy Branch

