Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlords for the cost of filing this application.

The female Tenant stated that on July 10, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenants submitted to the Residential Tenancy Branch on June 16, 2015, June 18, 2015, June 26, 2015, and July 06, 2015 were sent to each Landlord, via registered mail. The female Landlord acknowledged receipt of these documents and she declared that she is representing both Landlords at these proceedings. As the Landlord acknowledged receipt of these documents they were accepted as evidence for these proceedings.

On September 03, 2015 the Landlords submitted evidence to the Residential Tenancy Branch, which the Landlords wish to rely upon as evidence. The Landlord stated that these documents were served to the Tenants by registered mail on July 16, 2015. The female Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 02, 2015 the Tenants submitted evidence to the Residential Tenancy Branch, which the Tenants wish to rely upon as evidence. The female Tenant stated that this evidence was served to the Landlord by registered mail on September 03, 2015. The Landlord stated that this evidence was not received until September 10, 2015.

The Landlord stated that she has not had sufficient time to consider the evidence the Landlords received on September 10, 2015, which is a letter from a former occupant of the residential property dated August 27, 2015.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that to the extent possible, an applicant must submit all evidence to be relied on at the hearing when the Application for Dispute Resolution is submitted. The only exception to this rule is when an application is subject to a time constraint, such as an application under sections 38, 54 or 56 of the *Residential Tenancy Act* (*Act*) or sections 47 or 49 of the *Manufactured Home Park Tenancy Act.* Given that this letter is dated August 27, 2015 and the Application for Dispute Resolution was filed prior to that date, I find this evidence could not have been submitted when the Application for Dispute Resolution was filed.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. The

Tenants' evidence is that the evidence submitted to the Residential Tenancy Branch on September 02, 2015 was not mailed to the Landlord September 03, 2015. As this is only 12 days prior to the hearing on September 15, 2015 I must conclude that the evidence was not served in accordance with the timeline established by rule 3.14.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that I may consider evidence that is not served on time if the evidence is relevant. I find that the letter from the former occupant of the residential property, dated August 27, 2015, may be relevant to the issues in dispute.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure further stipulates that I may consider evidence that is not served on time if accepting the late evidence does not unreasonably prejudice one party. I find that it would be reasonable to accept this "late" evidence providing the Landlord is provided with the opportunity to respond to the evidence.

At the hearing the Landlord stated that she would like to submit evidence in response to the "late" evidence. She agreed to proceed with the hearing with the proviso she would be permitted to respond to the "late" evidence if necessary. The Landlord agreed that will not need time to respond to this late evidence if the Tenants' claim for compensation for loss of use of the yard is dismissed. As I have dismissed the Tenants' claim for compensation for loss of use of the yard, I find there is no need to provide the Landlords with an opportunity to respond to the "late" evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

At the outset of the hearing the parties were advised that I know an individual with a similar name to the female Tenant. After discussing the issue with the female Tenant I am satisfied that she is not the individual I know and that I can adjudicate this matter without bias. Both parties indicated they have no concerns regarding my ability to adjudicate this matter impartially.

Issue(s) to be Decided

Are the Tenants entitled to compensation for withdrawal of services and/or damage to personal property?

Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began on August 01, 2011;
- the Tenants were required to pay rent of $925.00 by the first day of each month;
- the tenancy ended on July 31, 2015;
- the rental unit is in a residential complex that has one other suite; and
- the residential property is approximately .5 of an acre.

The Tenants are seeking compensation, in the amount of $117.00, for a broken bird bath. The female Tenant stated that neither Tenant observed the bird bath being broken but they suspect

it was broken when the Landlord was cleaning the yard. The Landlord stated that the Landlord does periodically clean the yard but that the Landlords did not damage the bird bath.

The Tenants are seeking compensation, in the amount of $272.00, for being denied access to the laundry facilities on the residential property.

The female Tenant stated that:

- prior to the start of the tenancy the Tenants were told they could use the laundry facilities in the lower portion of the residential complex;
- they did use those facilities for most of their tenancy;
- in February of 2015 she placed a load of laundry in the washing machine;
- when she returned to finish he laundry she determined that the door to the laundry facilities had been blocked; and
- the Tenants were not advised they could not use the laundry facilities until after the door was blocked.

The Landlord stated that:

- prior to the start of the tenancy the Tenants were told they could use the laundry facilities in the lower portion of the residential complex only if the person occupying the lower suite did not object;
- the Tenants did use those facilities for a part of this tenancy;
- when a single female moved into the rental unit she advised the Landlords that she did not feel comfortable having the Tenants use the laundry facilities;
- the male Landlord verbally informed the Tenants in late December of 2014 or early December of 2015 that they could no longer use the laundry facilities; and
- the male Landlord did block the access to the laundry facilities in February of 2015.

The Landlords submitted a copy of the tenancy agreement in evidence, which clearly indicates free laundry is not provided with the tenancy.

The Tenants submitted an undated letter from the person who lived in the lower rental unit from October of 2010 until October of 2012. The author of the letter declared that:

- she “agreed” to let the Tenants use the laundry area as long as “they knocked and I knew they were there”;
- she was not told at the start of the tenancy that she would have to share the laundry facility with the occupant of the upper rental unit;
- as soon as the Tenants moved into the upper rental unit she was advised that she could no longer lock the door to the laundry room.

The Tenants are seeking compensation, in the amount of $4,162.50, because the Landlords stored their fifth wheel on the residential property.

The female Tenant stated that:

- the Tenants were told that they and the person occupying the lower suite were the only people who would be using the yard;
- the Tenants were not told that the Landlords would be storing their fifth wheel on the residential property;
- the fifth wheel was not on the property at the start of the tenancy;
- the Landlords moved their fifth wheel onto the property in the Spring of 2012;

- the fifth wheel remained on the property for most of the tenancy, although it was moved for one week in the Spring of 2012;
- they never informed the Landlords, in writing, that they did not want the fifth wheel on the property;
- they verbally informed the Landlords they did not want the fifth wheel on the property;
- the location of the fifth wheel interfered with the use of the property because it was in the area they liked to entertain;
- the Landlords told the Tenants not to use the fire pit because it was too close to the fifth wheel; and
- neither the Tenants nor guests of the Tenants have ever used the fifth wheel.

The Landlord stated that:

- prior to the start of the tenancy the Tenants were told that the Landlords would be periodically staying in their fifth wheel that was parked on the residential property;
- the fifth wheel was on the property at the start of the tenancy;
- the fifth wheel remained on the property for most of the tenancy, although it was moved for approximately three months in the Spring of 2012 and for one week in late 2013;
- the Tenants never told them they had any concerns about the fifth wheel being on the property prior to the filing of this Application for Dispute Resolution;
- the location of the fifth wheel did not interfere with the Tenants' use of the property;
- the Tenants were permitted to use the fire pit but were told not to use it, on occasion, because of the risk of wild fires; and
- the Tenants have housed guests in the fifth wheel on at least one occasion.

The Tenants are seeking a refund of $300.00 because the gas was routinely turned off in May, June, and July.

The Landlords and the Tenants agree that the Tenants agreed to pay a monthly fee of $100.00 for propane consumption and that they were not required to pay more than $1,200.00 per year even if they used more than that amount.

The Tenants are seeking compensation, in the amount of $15.00, because the exterior water taps were turned off and/or removed.

The female Tenant stated that:

- one of the exterior taps was removed in February of 2015;
- the occupant of the lower rental unit has control over the remaining exterior taps and she shut them off;
- since May of 2015 the occupant of the lower rental unit turned the water on when she wished to use the exterior taps and would shut it off again once she was finished using the water;
- the inability to use the exterior water taps forced the Tenants to carry water from inside the house when they wanted to water their exterior plants or feed their chickens; and
- nobody ever told them they could use the exterior taps between 6 p.m. and 10:00 p.m.

The Landlord stated that:

- one of the exterior taps was removed in an attempt to prevent the Tenants from doing their laundry outside;
- the occupant of the lower rental unit has control over the exterior taps

- the occupant of the lower rental unit turned the exterior taps on at 6 p.m. and off at 10 p.m. in an effort to comply with local watering restrictions;
- use of the exterior taps were restricted in April or May of 2015;
- she believes the occupant of the lower rental unit told the Tenants when the exterior water would be available to them; and
- if the occupant of the lower rental unit did not tell the Tenants when the exterior water would be available to them, they should have observed her using the water during those hours and realized they could also use the exterior taps during those hours.

The Tenants are seeking compensation, in the amount of $100.00, because the new occupant of the lower rental unit was given the full use of the garden.

The female Tenant stated that in February of 2015 the Landlords told them the new occupant had sole use of the garden and that they could no longer use any portion of it. The Landlord stated that the Tenants were not told they could not use the garden and that there is amply space for both parties to garden.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenants have failed to establish that the Landlords broke their bird bath. In reaching this conclusion I was heavily influenced by the testimony of the Landlord, who stated that the Landlords did not damage the bird bath, and by the absence of any direct evidence that corroborates the Tenants' suspicion that the Landlords damaged the bird bath. As the Tenants have failed to establish that the Landlords damaged the bird bath, I dismiss their claim for compensation for the damaged bird bath.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a non-essential service or facility provided with the tenancy if the landlord gives 30 days' written notice of the termination or restriction and 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.

I find that the Tenants have submitted insufficient evidence to establish that laundry services were provided as a term of the tenancy agreement. In reaching this conclusion I was heavily influenced by the tenancy agreement that was submitted in evidence, which clearly indicates free laundry is not provided with the tenancy.

In determining that the Tenants have failed to establish that laundry services were provided as a term of the tenancy agreement, I was further influenced by the absence of evidence that corroborates the Tenants' submission that prior to the start of the tenancy they were told they could use the laundry facilities or that refutes the Landlords' submission that the Tenants were told they could use the laundry facilities only with the consent of the person occupying the lower

rental unit.

As the Tenants have failed to establish that laundry services were provided as a term of the tenancy agreement, I find they are not entitled to compensation for not being able to use the laundry facilities for a portion of this tenancy.
In adjudicating the claim for the laundry room I have placed little weight on the letter from the Tenant who occupied the lower rental unit when the Tenants moved into the rental unit. At one point in the letter she declared that she "agreed" to let the Tenants use the laundry area as long as "they knocked and I knew they were there", which corroborates the Landlords' submission that the Tenants could use the laundry facilities only with the consent of the person occupying the lower rental unit. At another point in the letter she declared that as soon as the Tenants moved into the upper rental unit she was advised that she could no longer lock the door to the laundry room, which corroborates the Tenants' submission that they were told they could use the laundry facilities. As the letter is contradictory, I find that it has little substantive value.

In circumstances such as these, where the yard is shared by occupants of two separate rental unit, tenants should have no reasonable expectation that they will have the exclusive use of the yard. As the Tenants were not informed that they had exclusive use of the yard, and they should not have had any reasonable expectation of such exclusive use, I cannot conclude that the Tenants are entitled to any compensation because there was a fifth wheel on the residential property.

In determining that the Tenants are not entitled to any compensation because there was a fifth wheel on the residential property, I was influenced by the absence of evidence that corroborates the testimony of the female Tenant, who stated the fifth wheel was not on the property at the start of the tenancy or that refutes the testimony of the Landlord, who stated that the fifth wheel was on the property at the start of the tenancy.

I find that the letter from the former occupant of the residential complex, dated August 27, 2015, is of little value in determining this claim, as it lacks pertinent details. In the letter the author declares that the Landlords had moved their fifth wheel in July and had told the author it would not be coming back. Given that the author does not declare whether the trailer was moved in July of 2011 or July of 2012, I find that the letter does not establish whether the fifth wheel was present when the Tenants moved onto the property in August of 2011.

Even if I concluded that the fifth wheel was moved onto the property after the start of the tenancy and that prior to the start of the tenancy the Tenants were not informed there would be a fifth wheel stored on the property, I would dismiss their claim for compensation as a result of the fifth wheel being stored on the property. This is a large .5 acre piece of property which has ample room for storing the fifth wheel. The photographs submitted in evidence show that the fifth wheel is stored in a location on the property which, in my view, does not have a significant impact on the occupants of the residential complex. I therefore find that the presence of the fifth wheel does not significantly impact their use of the shared yard.

On the basis of the undisputed evidence, I find that the Tenants agreed to pay a monthly charge of $100.00 for propane, which was not based on the amount of propane used during the year. As the Tenant was not required to pay more than $1,200.00 per year if they used more than that amount, I cannot conclude that they are entitled to a refund if they used less than that amount. I therefore dismiss the Tenants' claim for a $300.00 refund.

On the basis of the undisputed evidence, I find that the Landlords restricted the Tenant's ability to use the exterior taps when they authorized the occupant of the lower rental unit to turn off the exterior taps between 10 p.m. and 6 p.m. in an effort to comply with watering restrictions. In the absence of evidence to the contrary, I find that the Tenants were not told that they could use the exterior taps between 6 p.m. and 10 p.m., which effectively terminated their access to exterior water.

Although I find it reasonable for a landlord to restrict exterior water usage in an effort to comply with watering restrictions, I find that the landlord has an obligation to clearly inform a tenant of when they can use the exterior taps. I find that it is not sufficient to simply assume a tenant will deduce when the service is available to them on the basis of observing other occupants using the water.

Given that the Tenant required water to care for the plants and chickens, I find that terminating the Tenant's access to exterior water for May, June, and July reduced the value of this tenancy by more than $15.00. I therefore find that the Tenant is entitled to the full amount of their claim for $15.00.

I find that the Tenants have submitted insufficient evidence to establish that they were told they could not use the garden. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that they were told not to use the garden or that refutes the Landlords' submission that the Tenants right to use the garden was not withdrawn. As the Tenants have failed to establish that their right to use the garden was terminated, I dismiss their $100.00 claim for compensation.

As the Tenants have failed to establish that laundry services were provided as a term of the tenancy agreement, I find they are not entitled to compensation for not being able to use the laundry facilities for a portion of this tenancy.

I find that the Tenants' Application for Dispute Resolution has some merit and that they are entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of $65.00, which is comprised of $15.00 for being unable to use the exterior taps for a period of the tenancy and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: September 16, 2015

Residential Tenancy Branch