



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, MNDC, MNSD, FF, ERP, RP

Introduction

This is the tenant's adjourned hearing to have his file cross-referenced to the landlord's application as per the Original Arbitrator's Decision on August 25, 2015 by consent.

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

- an order of possession pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;

- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence.

After waiting 39 minutes past the start of the scheduled hearing time the landlord's application was dismissed without leave.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the landlord's application dismissed without leave to reapply as the tenant was in attendance to respond.

During the hearing the tenant clarified that as the tenancy ended on June 30, 2015 that the tenant's request for emergency repairs for health or safety concerns and the request for repairs to the rental unit were withdrawn. The tenant also withdrew the request for the cost of emergency repairs as that was selected in error. As such, the hearing proceeded strictly on the tenants' monetary claim for money owed or compensation for damage or loss, the return of the security deposit and recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss, for the return of the security deposit and recovery of the filing fee?

Background and Evidence

This tenancy began on December 1, 2012 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 2, 2012. The monthly rent began at \$750.00 payable on the 1st day of each month. The monthly rent at the end of the tenancy was later increased to \$775.00. A security deposit of \$375.00 was paid on December 12, 2012. A condition inspection report for the move-in was completed by both parties on November 30, 2012.

The tenant stated that the tenancy ended on June 30, 2015 as a result of a notice to vacate the rental unit in a letter dated May 24, 2015.

The tenant seeks a monetary claim of \$4,850.00 which consists of:

| | |
|------------|--|
| \$2,050.00 | Cost of Cable and Internet Charges/installation |
| \$425.00 | Cost of a security camera and its installation |
| \$2,000.00 | Compensation for the loss of use of a toilet over a 3 year period. |
| \$375.00 | Return of the security deposit |

The tenant stated that as part of the signed tenancy agreement the landlord was to provide cable and internet, but failed to do so for the period of the tenancy. The tenant seeks recovery of \$2,050.00 which is based upon the tenant's cable and internet charges of \$65.00 per month for 31 months and a \$35.00 charge for installation. A review of the signed tenancy agreement shows that "cablevision" was included in the agreement. The tenant gave undisputed affirmed testimony that internet was also verbally promised by the landlord as part of the tenancy. No invoices or receipts were provided.

The tenant stated that after 2 break-ins the landlord stated that he would install a security camera to as his commitment to resolving the security issues. The tenant provided undisputed affirmed testimony that the landlord gave permission for the tenant to purchase and install the security camera. The tenant stated that \$425.00 was paid for the camera and installation. The tenant seeks recovery of this cost from the landlord. No invoices or receipts were provided.

The tenant also seeks compensation of \$2,000.00 for the loss of use of a toilet over a 3 year period. The tenant stated that over the tenancy period, the toilet would get clogged on a frequent basis. The tenant stated that the landlord was notified, but that nothing was done to resolve the issue by the landlord. The tenant

Analysis

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. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord caused the losses.

I accept the undisputed affirmed testimony of the tenant and find that a monetary claim has been established. The landlord after having been properly notified the adjourned hearing by consent to cross reference the tenant's application with the landlord's application scheduled for this date, failed to attend.

The tenant's claims for compensation have been established for recovery of:

| | |
|------------|---|
| \$2,050.00 | Cost of Cable and Internet Charges/installation |
| \$425.00 | Cost of a security camera and its installation |

The tenant's claim for compensation for \$2,000.00 for the loss of use of a toilet, intermittently over a 3 year period has not been established. In review of the tenant's written submissions, he stated,

I only had one washroom in the house which get clogged in November 2014 first time, I asked my landlord to change it or fix it. I kept asking same I sent message when we majorly stick with it on January 2015 we have to use same toilet clogged toilet and sometime we have to go out and use common toilet or our relatives toilet...at the end after 3 months he changed because his plumber says not repairable or totally clogged I think he fixed in End of Feb or march, but for roughly 3 month it mental torture.

The tenant originally gave direct testimony that he was without the use of a toilet over a 3 month period, but later clarified that this was an ongoing toilet issue since the beginning of the tenancy. This statement is clearly contradicted by the tenant's written submissions that the toilet problem began in November 2014. Based upon the inconsistent and contradictory testimony of the tenant, I find that the tenant has failed to establish a claim for the amount sought. However, based upon the undisputed evidence of the tenant, the tenant was without normal use of a toilet for a period of approximately 5 months. As such, I grant a nominal award for \$200.00 per month for a total of \$1,000.00. This is equal to a 25% loss of use of the rental unit based upon the monthly rent of \$775.00.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

Based upon the undisputed affirmed testimony of the tenant, it is clear that the tenancy ended on June 30, 2015 and the tenant provided his forwarding address in writing to the landlord in an email dated June 29, 2015. The landlord had originally filed an application for dispute resolution to retain the security deposit in an application dated July 28, 2015. However, the landlord failed to attend to advance his claim and the application was therefore dismissed without leave. On this basis the tenant is entitled to the return of the original \$375.00 security deposit. Pursuant to section 38 (6) the landlord having failed to return the security deposit within 15 days after the later date of June 30, 2015 is required to pay a monetary award for failure to comply with the Act. The tenant is also entitled to an award of \$375.00 for the landlord's failure to comply with the Act.

The tenant has established a total monetary claim of \$4,225.00. This consists of:

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|------------|--|
| \$2,050.00 | Cost of Cable and Internet Charges/installation |
| \$425.00 | Cost of a security camera and its installation |
| \$1,000.00 | Compensation for the loss of use of a toilet over a 3 year period. |
| \$375.00 | Return of the security deposit |
| \$375.00 | Landlord's failure to comply with Sec.38 |

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favor in the amount of \$4,275.00 as noted in the above terms. The landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division 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: December 10, 2015

Residential Tenancy Branch

