



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACD Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, RP, RR, OLC, PSF, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for authority to reduce the rent, for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement; for an Order requiring the Landlord to provide services; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

At the hearing the Tenant withdrew the application for an Order requiring the Landlord to make repairs or to provide services, as those matters have been resolved.

The Tenant stated that on March 22, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted to the Residential Tenancy Branch on March 21, 2016 were personally served to an agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to submit to present relevant oral evidence, to ask relevant questions, to call relevant witnesses, and to make relevant submissions. At the start of the hearing the Tenant indicated that she had witnesses standing by however by the end of the hearing the Tenant concluded that the witnesses would not be required.

Issue(s) to be Decided

Is the Tenant entitled to financial compensation for deficiencies with the rental unit or because she was not able to move into the rental unit at the start of the tenancy?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on March 01, 2016;
- the Tenant agreed to pay rent of \$1,150.00 by the first day of each month;
- a condition inspection report was completed on March 01, 2016, at which time the Tenant expressed concerns about the cleanliness of the rental unit;

- the Tenant outlined her concerns about the cleanliness of the rental unit in an email on March 02, 2016;
- the Landlord offered to compensate the Tenant, in the amount of \$75.00 to \$100.00 for cleaning the rental unit, but the parties could not agree on the amount of compensation;
- the Landlord told the Tenant that the strata was responsible for cleaning the balcony; and
- the digital images submitted in evidence by the Tenant accurately represent the condition of the rental unit at the start of the tenancy.

The Tenant is seeking compensation, in the amount of \$183.00, for cleaning the rental unit at the start of the tenancy. The Tenant contends that the rental unit was not in reasonably clean condition at the start of the tenancy. She stated that she moved her property into the rental unit on March 02, 2016 but she did not stay in the unit until March 07, 2016, in part, because the unit required cleaning.

The Tenant stated that she worked several days of 12 hours shifts after the start of this tenancy so she could not clean the rental unit on March 02, 2016. She stated that on March 06, 2016 she paid a professional cleaning company \$105.00 for two hours of cleaning and that she spent another 6 hours cleaning the unit, for which she is seeking compensation of \$78.00. The Tenant submitted a copy of the cleaning receipt.

The Agent for the Landlord stated that after the tenancy began the Landlord arranged to have the blinds cleaned and that the Landlord believes that the offer of \$75.00 to \$100.00 is reasonable for the amount of cleaning needed. The Tenant agrees the blinds were cleaned but she does not agree that \$100.00 is reasonable compensation for cleaning.

The Tenant is seeking compensation, in the amount of \$50.00, for being without a dishwasher for approximately one month, which the parties agree was not working at the start of the tenancy. The Agent for the Landlord stated that the dishwasher was repaired on March 29, 2016 and the Tenant stated that it was repaired on March 30, 2016.

The Tenant is seeking compensation, in the amount of \$222.58, because she was unable to stay in the rental unit for the first six days of the tenancy, in part because she did not have a properly functioning electronic access fob for the garage.

The Agent for the Landlord and the Tenant agree that:

- the tenancy included secure parking that the Tenant accessed with an electronic fob;
- there was no street parking or alternate parking on the residential complex where she could park for extended periods;
- the Tenant reported a problem with the fob, by email, on March 02, 2016; and
- a third fob was provided to the Tenant on March 21, 2016 or March 22, 2016

The Tenant stated that:

- she did not stay in the unit until March 07, 2016, in part, because the remote access to the parking garage did not work properly;
- she did not wish to stay in the rental unit because she was concerned that she would not be able to exit the parking garage with the parking fob and would not, therefore, be able to attend work;

- the fob that she was provided at the start of the tenancy only worked approximately once every twenty times it was activated;
- a replacement fob was provided to her on March 04, 2016;
- the replacement fob also worked sporadically, but was somewhat more reliable; and
- she reported a problem with the second fob on March 11, 2016.

The Agent for the Landlord stated that:

- the fob worked properly when it was given to the Tenant on March 01, 2016;
- a replacement fob was provided to the Tenant's parents on March 03, 2016;
- the replacement fob worked properly when it was given to the Tenant's parents; and
- the Tenant reported a problem with the second fob on March 21, 2016.

The Tenant an email from the Agent for the Landlord, dated March 04, 2016, in which she declares that the fob was provided to the Tenant's mother on March 03, 2016.

The Tenant is seeking compensation, in the amount of \$222.58, because she was unable to stay in the rental unit for the first six days of the tenancy, in part because the patio door did not open. The parties agree that problem with the door was reported on March 02, 2016 and was repaired on March 06, 2016.

The Tenant stated that she did not feel comfortable staying in the rental unit until the door was repaired because she deemed it to be her emergency exit. The Tenant did not submit any evidence to show that building standards require a secondary exit.

The Agent for the Landlord stated that many units in this residential complex have enclosed patios that do not serve as an emergency exit and that she is unaware of any legal requirement to have a secondary exit.

The Tenant withdrew her claim for compensation for purchasing a sink stopper, as that matter has been resolved by the parties.

Analysis

Section 37(2) of the *Act* requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. As a tenant is required to leave a rental unit reasonably clean at the end of a tenancy, I find it reasonable to conclude that a tenant has the right to receive the unit in reasonably clean condition at the start of the tenancy.

On the basis of the digital images submitted in evidence, I find that the rental unit was not left in reasonably clean condition at the start of the tenancy. I find that the Landlord acted reasonably and responsibly when the Landlord arranged to have the blinds cleaned at the start of the tenancy. I find that the Landlord should have also arranged to have the rental unit cleaned to a reasonable standard after the Tenant raised concerns about the cleanliness of the unit. I therefore find, pursuant to section 62(3) of the *Act*, that the Landlord must pay the Tenant the \$105.00 the Tenant paid to have the unit professionally cleaned.

The *Act* only requires that a rental unit be left in reasonably clean condition. It does not require the unit to be left in a standard that meets my personal standards or the Tenant's personal standards. I find that the two hours of professional cleaning would have brought the rental unit

to a reasonable standard of cleanliness and I therefore find that the Tenant is not entitled to any additional compensation for the time she spent cleaning the unit.

Although I accept that the rental unit required cleaning at the start of the tenancy, I do not find that the cleanliness of the rental unit prevented the Tenant from occupying the rental unit. I therefore find that she is not entitled to a rent refund for any period of March on the basis of the need to clean.

Section 27(2)(b) of the *Act* requires a landlord to reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement whenever a service or facility is terminated or restricted. Section 1(a) of the *Act* specifies that a service or facility includes appliances and furnishings that are provided or agreed to be provided by the landlord to the tenant of a rental unit.

On the basis of the undisputed evidence I find that the dishwasher that was provided with this rental unit did not work for approximately one month and that the Tenant is, therefore, entitled to compensation for being without this service/facility for one month. Determining the reduced value of a tenancy as a result of being without a dishwasher is highly subjective, and I find that compensation of \$25.00 for being without a dishwasher for one month is reasonable.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the electronic access fob that was provided to the Tenant on March 01, 2016 did not function properly. I find it highly unlikely that the Tenant would have gone through the inconvenience of obtaining a replacement fob if the one she had functioned properly.

On the basis of the email, dated March 04, 2016, I find that the Tenant's mother was provided with a replacement access fob on the evening of March 03, 2016. I therefore find that she had access to parking on the evening of March 03, 2016 and could reasonably have commenced living in the rental unit on March 04, 2016.

I find that the Tenant's concern that she may not be able to exit the parking garage until she had a replacement fob was reasonable. As the fob reportedly only worked once every twenty attempts, I find it was reasonable for her to be concerned it may stop functioning completely. As there is no evidence of alternate parking for the Tenant, I find that she is entitled to a rent refund for the first four days of March that she was unable to occupy the rental unit.

Per diem rent for March of 2016 was \$37.10. I therefore find that the Tenant is entitled to compensation of \$148.40 for those four days. As the Tenant was able to live in the rental unit with the second fob that was provided for the period between March 04, 2016 and when it was replaced on March 21, 2016 or March 22, 2016, I find that she is not entitled to a rent refund for March 05, 2016 or March 07, 2016 on the basis of a problem with the access fob.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. In the absence of evidence to show that there are health, safety, or housing standards that require the rental unit to have a secondary exit, I find that the Tenant could have occupied the rental unit even though the patio door did not open. I therefore find that she is not entitled to a rent refund for March 05, 2016 or March 07, 2016 on the basis of a problem with the patio door.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$378.40, which includes \$105.00 for cleaning, \$25.00 for being without a dishwasher, a rent refund of \$148.40, and \$100.00 in compensation for the fee to file this Application for Dispute Resolution. As requested by the Tenant at the hearing, I authorize the Tenant to reduce one monthly rent payment by \$378.40 in full satisfaction of this monetary claim.

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: April 29, 2016

Residential Tenancy Branch