Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMALO'S GROUP PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLD, ERP,RP, PSF, LRE, RR (Tenant's Application)
MNSD, OPM, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed November 26, 2015, which was amended January 7, 2016, they indicated that they sought the following relief:

1. monetary compensation from the Landlord in the amount of $5,000.00;
2. an Order that the Landlord comply with the *Residential Tenancy Act;*
3. an Order restricting the Landlord's right to enter the rental unit;
4. an Order compelling the Landlord to make repairs, emergency and otherwise;
5. an Order compelling the Landlord to provide services or facilities required by law; and,
6. an Order allowing the Tenant to deduct the cost of repairs, services or facilities from the rent.

The Landlord filed their application on December 27, 2015 seeking an Order of Possession based on a mutual agreement to end tenancy, authorization to retain the Tenant's security deposit and recovery of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The parties agreed that the Tenants vacated the rental unit December 16, 2015 pursuant to a Mutual Agreement to End Tenancy.

As a consequence the Landlord's request for an Order of Possession was not required.

Further the Tenant's request for the following Orders was no longer applicable:

1. an Order that the Landlord comply with the *Residential Tenancy Act;*
2. an Order restricting the Landlord's right to enter the rental unit;
3. an Order compelling the Landlord to make repairs, emergency and otherwise;
4. an Order compelling the Landlord to provide services or facilities required by law; and,
5. an Order allowing the Tenant to deduct the cost of repairs, services or facilities from the rent.

The above claims are noted as being withdrawn.

Naming of the Corporate Landlord

In their Application the Tenants name two individuals as the Landlord. The tenancy agreement submitted in evidence confirms that the tenancy is between the Tenants and a corporate Landlord, G.G.P.M. Inc. In the Landlord's Application, the corporate Landlord is accurately named.

Pursuant to section 64(3)(c) I amend the Tenants' application for dispute resolution, to accurately name the corporate Landlord.

Recording of Hearing

During the hearing it appeared as though the Tenant, M.V., was recording the hearing. I reminded the Tenant that she was not permitted to do so pursuant to *Residential Tenancy Branch Rules of Procedure Rule 6.11.* I further directed her that if she was recording the hearing, she was to stop, and to destroy the recording. The Tenant stated that she was not recording the hearing.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?

2. Is the Tenant entitled to monetary compensation from the Tenants?

3. What should happen with the Tenant's security deposit?

4. Should the Landlord recover the filing fee?

Background and Evidence

As the Tenants filed their application first, they presented their claim first.

The Tenant M.V. testified on behalf of the Tenants. She testified that the tenancy began on October 1, 2014. Introduced in evidence was a copy of the tenancy agreement and which indicated that the Tenants paid monthly rent of $1,075.00. M.V. testified that the Tenants r paid a security of $537.50 which was "rounded up" on the tenancy agreement as $538.00. The Tenants also paid the Tenants paid a $25.00 deposit for the "gym key".

The Tenants sought return of double the deposits paid.

M.V. testified that the Landlord did not perform a move in or move out condition inspection. M.V. further testified that the Landlord did not provide the Tenants with two opportunities to perform a move in or move out condition inspection as required by the *Act* and the regulations.

The Tenant confirmed that the tenancy ended December 16, 2015 pursuant to a mutual agreement to end tenancy. She claimed that part of this agreement was that they would not be responsible for paying rent for the second half of December 2015 and as they had already paid the Tenants sought recovery of the $537.50 paid.

M.V. testified that she provided the Landlord with written Notice of the mailing address to send the security deposit on December 6, 2015. M.V. stated that she wrote her address down "on a piece of paper in the Landlord's office". M.V. confirmed she did not have a copy of this document and did not provide it in evidence.

The Landlord testified that the Tenants participated in a “Condition Inspection Report” on September 30, 2014. She claimed that she provided a copy of this Report to the Branch on January 14, 2015 and further stated that the assistant Manager, S.G., personally delivered the documents to the Tenant on January 15, 2015. No such copy was received by the Branch or the Tenant.

The Landlord further testified that the Tenants refused to participate in a move out condition inspection. The Landlord also stated that the Manager gave the Tenants written notice of the final opportunity to perform the move out condition inspection. Again, she stated that she provided a copy of this letter to the Branch on January 14, 2015 and claimed that the assistant Manager, S.G., personally delivered the documents to the Tenant on January 15, 2015. Again, no such document was received by the Branch or the Tenant.

The Tenant, M.V., testified that in fact, the manager, M.W.,’s husband had a stroke and as a result the Manager was not able to perform a move in condition inspection.

M.V. further testified that they were not provided with a letter providing them with written notice of a final opportunity to do a move out condition inspection, as they actually did a “walk through” on December 16, 2015 with the assistant manager “S”.

In their amendment filed January 7, 2016, the Tenants prepared and submitted a table setting out the amount of compensation they sought (including the aforementioned return of double the deposits paid) as follows:

- $875.00 for a “portion of each month’s rent that the shower wasn’t working”.

M.V. claimed that the water fluctuations in the shower were so extreme that she and her family, including her small child, risked scalding burns every time they showered. She stated that the rental unit had only one bathroom and they had no other option but to use the shower. She further stated that she had been in a motor vehicle accident and as such was not able to bathe her child in the bathtub such that a shower was a necessity.

M.V. stated that they informed the Landlord that they expected a $150.00 per month reduction in rent by letter dated November 19, 2015. This letter was introduced in evidence.

M.V. stated at the hearing that she in fact sought the sum of $175.00 per month, which she claimed represented 10% of the rent. When I informed M.V. that 10% was in fact

$107.50, she confirmed she sought $175.00 per month for five months from June 2015 to December 2015.

- $500.00 for bodily harm to their daughter as a result of the shower.

The Tenants submitted photos of their daughter in support of this claim.

- $554.88 as recovery of the rent paid in the amount of for 16 days of December for which they paid rent and were not in the rental unit pursuant to the Mutual Agreement to End Tenancy.

- $668.12 for alleged “harassment and inconvenience for each day that was disrupted due to their negligence” for 19 days from November 12 to December 16, 2015 at $34.68 per day.

M.V. stated the disruption related to the shower issues and the attendance of the Landlord, the Landlord’s agents, and professionals hired by the Landlord to tend to the repairs. She confirmed at the hearing that this was not really “harassment” but rather an inconvenience.

M.V. further stated that although the Landlord promised that various plumbers would attend to address this issue, often the plumbers would not in fact attend.

- $940.96 for defamation due to a child services report.

- $75.00 for alleged lost benefits of a “therapeutic massage” which she says was required because the Landlord shoved her.

- $250.04 for moving expenses.

In support of their claim, the Tenants submitted several recordings of conversations with the Landlord and the Landlord’s employees. For the most part, the individuals being recorded do not seem to be aware they are being recorded.
In one such recording, the Landlord asks the Tenant, M.V., for the opportunity to observe the shower running to confirm the extreme fluctuations in temperature alleged by the Tenants. M.V. denies the Landlord the opportunity, purportedly on the basis that the Landlord is not a plumber. Unfortunately the communication between the parties deteriorates from that point to allegations of potential child abuse, name calling and allegations of physical assault. It is not necessary for me to make any finding as to who is most at fault for the decline in respectful communication on that date.

The Landlord filed their Application for Dispute Resolution 9 days after the tenancy ended, on December 27, 2015. In this application they claimed $150.00 in monetary compensation from the Tenant for the following:

- $141.75 for the cost of carpet cleaning on December 30, 2015; for which the Landlord provided a copy of the receipt in evidence; and,

- $8.25 as compensation for the cost of cleaning of the rental unit (which the Landlord claimed took 6 hours). The Landlord confirmed that she claimed only $8.25 as she hoped the Tenant would simply clean the rental and move out.

The Landlord stated that the parties agreed on December 6, 2015 that the Tenants would receive reimbursement of the rent paid for December 16, 2015 to December 31, 2015 as well as her security deposit in the full amount if the Tenants cleaned the rental unit and discontinued the Tenants' application filed in November of 2015. The Landlord further claimed that the Tenants agreed that if they did not clean the rental unit the Landlord could retain a portion of the security deposit.

The Landlord stated that two cheques were prepared for the Tenant: one was for the full amount if the suite was cleaned. At that time the Landlord said she was willing to cover the cost of carpet cleaning. The Landlord testified that when the rental unit was not cleaned the Landlord retained the $150.00 for the carpet cleaning and general cleaning and prepared a cheque for $933.00 for the Tenant to retrieve. The Landlord testified that the Tenant refused to pick up this cheque and said "see you in court".

In response to the Tenants' claims for monetary compensation, the Landlord submitted as follows.

The Landlord testified that the Tenants complaints about the shower was in relation to a fluctuation of heat and temperature which is common in rental buildings of a similar age (1976). The Landlord stated that the shower was checked on numerous occasions by the Landlord's agents and persons hired by the Landlord. She further stated that when persons hired by the Landlord attempted to address the issue, the Tenant interrogated and video-taped them (without their knowledge or consent) such that the plumbers were then uncomfortable doing the work.

The Landlord stated that when she personally spoke to M.V. about her concerns with the shower temperature and the possible risk to her baby, the Landlord suggested she

not to shower with her child, at which time the Tenant became very upset. Notably, the audio recordings submitted by the Tenant confirm this to be the case.

The Landlord testified that a temperature regulator for the shower was put in the suite at some point in time between December 3 to 5, 2015. She further confirmed that the day after the shower was completed the parties agreed to end the tenancy.

Introduced in evidence by the Landlord was a letter from D.P. Plumbing as well as an invoice for $678.49. In this letter, the writer indicates he informed the Landlord that temperature fluctuations were normal in a building of “this era”. He further writes that the Tenant recorded him without his consent and attempted to engage him in conversations about the management of the building. The writer further indicates that the work was delayed due to tiling, as well as the Tenants’ holiday plans. He writes that the Tenant recorded him a second time, again without his consent.

At the March 17, 2016 hearing the Tenant replied to the Landlord’s submissions as follows.

The Tenant stated that the statement provided by D.P. Pluming was false. She confirmed that he came to the rental unit on December 4, 2015 and stated that while she did record him she did not interrogate him. She said that she asked him for his name and business and he told her “you are not the boss of me”.

M.V. stated she was told by the assistant manager, S.G., that she was instructed not to release the cheques to the Tenant unless the Tenant agreed to withdraw her application for dispute resolution.

The Tenant further stated that the rental unit was perfectly clean when the tenancy ended. In support she provided a recording of the move out condition inspection wherein she claims the assistant manager said “everything is perfect” and “wow, this place smells clean”.

The Tenant claimed that she was not required to clean the carpets.

The Landlord stated that she had not listened to all the recordings from the Tenant but confirmed that it was her assistant S.G. who did the move out.

The Landlord confirmed that the carpets required cleaning, whether it smelled clean or not and that at no time did she agree that the Tenants would not be required to clean the carpets.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

The Landlord claimed to have conducted a move in condition inspection report; yet, no such report was introduced in evidence. The Tenants testified that no such report was completed. I find, on a balance of probabilities that the Landlord failed to perform the move in inspection and prepare the report in accordance with the *Residential Tenancy Act* and the regulations. By failing to perform the incoming condition inspection reports in accordance with the *Act*, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to section 24(2) of the *Act.*

Therefore, I award the Tenants recovery of their security deposit in the amount of **$538.00** in addition to recovery of the **$25.00** gym key deposit.

The Landlord applied for dispute resolution on December 27, 2015 which is within the 15 days of the end of the tenancy. Accordingly, I decline the Tenants' request for a doubling of the deposits in accordance with section 38(6) of the Act.

I find, based on the evidence before me that the parties agreed to a mutual end to tenancy effective December 16, 2015. Pursuant to this agreement I find the Tenants are entitled to recovery of the **$554.88** paid in rent for the balance of December during which time they were not in occupation.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove *all four of the following elements*:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants claim the sum of $875.00 in relation to the fluctuating shower temperature. They bear the burden of proving the above four elements in relation to this claim.

While it is clear this was a significant issue for the Tenants, it is equally clear the Landlord took reasonable steps to address this problem. I am unable to find that the Landlord was negligent in their response to the Tenants in this regard. While the claim could be dismissed for this reason alone, I am persuaded by the audio recordings submitted by the Tenants and find the Tenant, M.V., in refusing the Landlord an opportunity to observe the fluctuating water temperature, obfuscated the Landlord's attempt to address this issue, and in doing so, the Tenants failed to minimize their loss. For these reasons, the Tenant's claim for $875.00 is dismissed.

The Tenants claim for $500.00 for bodily harm to their infant daughter is similarly dismissed for the aforementioned reasons. Further, even in the event the Tenants' claim, that the shower temperature fluctuations were such that personal injury was possible, was accepted; it is unexplainable that a parent would knowingly expose an infant child to such risk. While I accept the Tenant, M.V., may have been limited (due to her own injuries) in her ability to bathe their daughter in the bathtub, thereby controlling the temperature, the Tenants failed to submit any explanation as to why J.C. did not assume this responsibility. This is an obvious choice for minimizing any potential loss and militates against their claim in this regard.

As child protection reports are dealt with by section 14 of the *Child Family and Community Services Act,* I decline jurisdiction to deal with the Tenants' claim for $940.96 for defamation in relation to a child services report.

The Tenants claim $668.12 for "harassment and inconvenience" related to repairs to the rental unit occurring over 19 days in November and December 2015. They claim $34.68 per day affected. Notably, this amount exceeds the daily rent charged.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair.

I accept the Landlord's evidence and testimony that they took all reasonable steps to minimize the impact to Tenants when dealing with the shower issues.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

While the interruptions were no doubt inconvenience and disruptive, the Tenants were able to remain in occupation of the rental unit. Accordingly, I find the Tenants are entitled to a nominal amount of $10.00 per day, or **$190.00** for the 19 days claimed.

The Tenant M.V. claimed $75.00 for the alleged "loss of benefits" from her therapeutic massage. I find that she failed to submit sufficient proof to support such a claim and accordingly, this claim is dismissed.

The Tenants claim $260.04 for moving expenses. Moving expenses are an inevitable cost of tenancy as renters are not guaranteed perpetual occupation. Accordingly, this claim is dismissed.

In total, I award the Tenants the sum of **$1,307.88** for the following:

Return of the Tenants' security deposit	$538.00
Return of the gym key deposit	$25.00
Return of rent paid for December 16-31 during which time the Tenants were not in occupation of the rental unit.	$554.88
Compensation for breach of quiet enjoyment	$190.00

TOTAL AWARDED TO TENANTS	$1,307.88

I will now consider the Landlord's claim.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

> **Leaving the rental unit at the end of a tenancy**
>
> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In a claim for monetary compensation for damages or loss, the Landlord is required to prove the four elements reproduced earlier in this decision; namely, that the damage or loss exists; that the loss was a result of the Tenant's actions of neglect in violation of the *Act* or agreement; the actual amount required to compensate for the claimed loss or to repair the damage; and that the Landlord mitigated any loss.

The Landlord claimed compensation for cleaning including carpet cleaning.

While the Landlord's claim for compensation for cleaning is minimal, I find they have submitted insufficient evidence to prove that cleaning was required. Accordingly, I dismiss the Landlord's claim for $8.25 for the cost of cleaning the rental unit.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides the following guidelines with respect to the care of carpets in a rental unit.

> **CARPETS**
>
> 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
>
> 2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.

> 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
>
> 4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

In the recordings submitted by the Tenants, M.V. questions the Landlord's representatives regarding the carpet cleaning. She repeatedly states that she was told she did not need to clean the carpets at the end of the tenancy. In those same recordings, it is clear that M.V. is adamant this is the case. On the other hand, the Landlord's representatives confirm that the carpets need to be cleaned as new renters are moving in (whom both parties refer to as "the boys").

The Policy Guidelines provide that a tenant is responsible for steam cleaning or shampooing carpets. I find the Tenant has submitted insufficient evidence to prove that the Landlord agreed otherwise. Accordingly, I award the Landlord **$141.75** for the cost of cleaning the carpets.

As the parties have enjoyed divided success, I decline the Landlord's claim for recovery of the filing fee.

The Tenants have been awarded the sum of $1,307.88**.** The Landlord has been awarded the sum of $141.75. These amounts are to be offset against one another such that the Tenant's entitlement is **$1,166.13.**

Conclusion

The Tenants are entitled to monetary compensation in the amount of $1,166.13. The Tenants are granted a Monetary Order in this amount and must serve the Order on the Landlord. The Order may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

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 15, 2016

Residential Tenancy Branch