



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Preliminary Matters

This is the second hearing for this matter. The first hearing was held on February 15, 2016. The parties made a settlement agreement to end the tenancy and the Tenants' applications dealing with an ongoing tenancy were dismissed as the tenancy ended.

This hearing is to hearing the Tenants' monetary claims. The Tenants and their Counsel gave undisputed testimony as the Landlord did not appear.

It should be noted the Landlord did not attend the hearing. A friend of the Landlord did phone in at the start of the hearing to say the Landlord would not be attending and she said she was not representing the Landlord. As well the Landlord's previous Counsel phoned in towards the end of the hearing and said he was no longer representing the Landlord but he was called by the Landlord's friend and asked to phone in. The Landlord's previous Counsel excused himself as he had no authorization to act for the Landlord. As a result the Landlord was not represented as she had not authorized anyone to represent her at the hearing although a friend and her previous Counsel did phone in.

Introduction

This matter dealt with the second part of the Tenants' application for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for the loss damage and if so how much?

Background and Evidence

This tenancy started on April 15, 2015 as a fixed term tenancy with an expiry date of May 1, 2016. Rent was \$2,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,100.00 on April 15, 2015. The Landlord and Tenants mutually agreed to end the tenancy on March 15, 2016.

The Tenants said there was no move in inspection report completed at the start of the tenancy but the Tenants repeatedly asked and emailed the Landlord to do repairs on the rental unit. The Tenants continued to say the Landlord told them to provide the Landlord with a list of repairs and the Landlord would take care of the repairs. The Tenants said they emailed the Landlord a list of repairs and it included a broken window in the bedroom, a broken and missing drawer in the master bedroom, to repair the toilet, repair a broken cupboard in the bath room, repair a loose panel in the bathroom, repair tiles on the back patio, repair the track lighting and repair the door in the bedroom. The Tenants said they repeatedly asked the Landlord to make the repairs and the Landlord did nothing. The Tenants said the Landlord did repair the back patio but they lost the use of it for over a month.

The Tenants said that as the tenancy went on there were additional repair items including a window that would not close, a broken stove burner, loose tile and moldings in the unit and other things. The Tenants said they thought they had rented a high end unit for \$2,200.00 per month and they were not getting what they believed they paid for.

Further the Tenants said there was a fire in the lower unit of the rental complex on November 10, 2015 and although they were not evacuated they should have been. The Tenants said their unit smelled of smoke and all their things smelled of smoke. The Tenants said they had to dry clean all their cloths and clean the unit to reduce the smoke smell. The Tenants said the Landlord did not offer any compensation or compassion for the incident.

Following the fire the Tenants said the Landlord did a biosweep of the rental units which involved spraying a chemical throughout the complex. The Tenant said the biosweep was done on December 21, 2015 and January 11, 2016. The Tenants said this caused them great discomfort and they left the unit from December 21, 2015 to December 26, 2015. The Tenants written evidence says they stayed in a hotel at the cost of \$724.17 and they are requesting to recover this amount. On questioning of the Tenants by the Arbitrator the Tenants said they did not actually stay in the hotel and the receipt they submitted was actually an estimate provided to the Tenants if they decided to stay at the hotel. A witness M. A. statement in the evidence package states that the female Tenant stayed at the witness' home starting December 21st, 2015.

The Tenants continued to say that after the fire incident in November, 2015 the Landlord became aggressive and unreasonable with the Tenants. The Tenants said that because the Landlord would not repair the windows and doors the Tenants' hydro bills were excessively high. The Tenant submitted their hydro bills for December, 2015

of \$520.07, for October, 2015 for \$376.08. The Tenants said these amounts are unreasonable for a 1,200 square foot rental unit.

The Tenants continued to say the Landlord's behaviour continued to be aggressive and the Landlord entered the unit without proper Notice and threatened the Tenant's sister who was visiting at the time. The Tenants said they did not feel safe in the rental unit because of the Landlord's aggressive and unreasonable behaviour. The Tenants said the video evidence show how aggressive the Landlord was to the Tenant's sister.

The female Tenant said that the Landlord physically assaulted her at the end of the tenancy during the move out. The Tenants submitted a video that shows part of the move out but does not show the physical assault.

The Tenants' Counsel said the Tenants monetary claim is for \$18,500.00 as the Tenants feel the Landlord reduced their quiet enjoyment of the property by not repairing the items they requested to be repaired, for the fire and biosweep incidents the Tenants had to endure and for the Landlords aggressive behaviour.

The Tenants' Counsel said they calculated the Tenants' claim as the amount of the rent the Tenants paid during the tenancy. The Tenants Counsel said this was his first tenancy dispute and so he did not know that they had to prove an actual loss occurred and they are required to support or verify the loss with evidence. The Counsel said the Tenants are claiming the amount of rent they paid for the full tenancy as compensation for the loss of quiet enjoyment of the rental unit.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In cases of loss of quiet enjoyment loss can also be calculated and ordered by the director pursuant to section 67 of the Act if the director finds grounds to do so.

It was apparent in the original hearing on February 15, 2016 that there were issues between the Tenants and the Landlord which motivated both of them to agree to a settlement agreement to end the tenancy. Now the Tenants are continuing with their application by making a claim for monetary compensation for loss or damage due to the Landlord's behaviour and actions. The Tenants Counsel said they did not understand the obligations of an applicant to prove a loss and to support the loss or damages with corroborative evidence. The Tenants' Counsel said he did not understand the Monetary Worksheet that the Tenants completed to make a claim requires the loss or damage to be itemize and the corresponding dollar amount claimed. The Tenants' Counsel said

they just put the amount of \$18,500.00 with no explanation on the worksheet. Counsel said they did say that this amount was indicated as the total amount of rent paid and the Tenants were requesting the rent paid to be returned as compensation for the loss of quiet enjoyment caused by the Landlord.

The first reason the Tenants give for loss of quiet enjoyment is that the Landlord did not repair items in the rental unit. Section 23 of the Act requires a move in condition inspection report to be completed to show agreed on the condition of a unit at the start of the tenancy. This is the responsibility of both the Tenant and the Landlord. As this report was not completed it is unknown what condition of the unit was agreed to. I have read the Tenants' and Landlord's emails and it appears the Landlord did send a workman to do the repairs but the workman and the Tenant did not coordinate the repairs and so the repairs were not done. The Tenants said they have not incurred any costs to do the repairs but are claiming compensation for the loss of quiet enjoyment and increased hydro costs that the Tenants incurred because of the repairs not being completed. The Tenants were asked if they made an application for dispute resolution for the Landlord to do the repairs. The Tenants said "no" they did not apply for repairs to be done to the rental unit until December, 2015. Although the Tenants did not itemize and quantify the extra costs that resulted from the repair work not being complete, especially the broken window and door issues; I find by the balance of probabilities that the Tenants did have a loss of enjoyment to the rental unit because things requested to be repaired at the start of the tenancy were not repaired. Consequently I award the Tenants the equivalent of one month's rent in the amount of \$2,200.00 for loss of enjoyment due to the repairs not being completed in a timely manner.

Further I find the Landlord had an obligation to the Tenants to evacuate them during the fire in the rental complex and make alternative accommodation available for them during the time period that the fire damage was repaired and the biosweep was being done. This time period was from November 10, 2015 to January 11, 2016. Consequently, I award the Tenant's the equivalent of $\frac{1}{2}$ a month's rent for 2 months in the amount of \$2,200.00 for the loss of use and loss of enjoyment of the rental unit.

With regards to the Landlord's behaviour I find the Tenants have not established grounds to prove grounds for compensation for any further loss of enjoyment caused by the Landlord; therefore I dismiss the remaining claims of the Tenants without leave to reapply due to lack of evidence.

As the Tenants have been partially successful in this matter, the Tenants are also entitled to recover from the Landlord the \$100.00 filing fee for this proceeding. The Tenants will receive a monetary order for the balance owing as following:

Loss of Quiet Enjoyment due to repairs not being completed:	\$ 2,200.00	
Loss of quiet enjoyment and use of the rental unit due to the fire and biosweep:	\$2,200.00	
Recover filing fee	\$ 100.00	
Subtotal:		\$4,500.00
Balance Owing		\$4,500.00

Conclusion

A Monetary Order in the amount of \$4,500.00 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) 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: April 11, 2016

Residential Tenancy Branch