



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, RR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the Tenant's security and pet deposits, for a rent reduction and to recover the filing fee for this proceeding.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on May 25, 2016. The Tenants provided tracking information and a paid Canada Post receipt to support the service of documents. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords absence.

At the start of the hearing the Tenants said they moved out of the rental unit on June 1, 2016 so they are no longer seeking to have the Notice to End Tenancy cancelled as the tenancy has ended. Further as the tenancy has ended the Tenants' application for a reduced rent while services and facilities are provided is also withdrawn.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for the damage or loss and if so how much?
2. Are the Tenants entitled to recover the security and pet deposits?

Background and Evidence

This tenancy started on January 1, 2016 as a month to month tenancy. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 at the start of the tenancy and a pet deposit of \$475.00 on January 20, 2016. The Tenants said they moved out on June 1, 2016 because of the poor living conditions and harassment they received from the Landlords. The female Tenant said the male Landlord scared her and she believed him to be dangerous. The female Tenant continued to say that communications broke down between the Landlords and the Tenants and only text messaging was used at the end of the tenancy. As a result the Tenants gave their forwarding address to the Landlords by text message on June 6, 2016. The male Tenant said he followed up by going to the Landlord in person to get their deposits and the male Landlord said he was not returning the deposits to the Tenants. The Tenants said they have not communicated with the Landlords since that incident.

The Tenants said that the living situation was unbearable. The Tenants said the Landlords did not maintain the property so the grounds were over grow and a water feature became a mosquito breeding pool. The Tenants said they could not use the yard or common areas. As well the Tenants said the Landlords who lived in the upper unit were very loud and had domestic fights that were disturbing for the Tenants. The Tenants said the police were called on at least one occasion. Further the Tenants said they paid \$135.00 extra for utilities but the Landlords did not file the propane tank which resulted in no heat for the rental unit. The Tenants said give the situation they thought it best to move out and make an application for dispute resolution to recover some of their costs.

The Tenants said they are requests the following compensations:

1. Loss of quiet enjoyment of the rental unit	\$3,600.00
2. Recover of extra utility costs	\$ 135.00
3. Security and Pet Deposits	\$ 950.00
4. Time to prepare application	\$ 200.00
5. Stress and Emotional Trauma	\$1,440.00
6. Purchase heater (no receipt)	\$ 80.00
7. Laundry costs (Landlord stopped access to laundry)	\$ 240.00
8. Moving Expenses	\$ 360.00
9. Deposits and rent at new tenancy	\$2,400.00
10. Filing fee	\$ 100.00
11. Tenants labour to repair water feature	<u>\$ 170.00</u>
Total	<u>\$9,675.00</u>

The Tenants continued to say they have submitted 7 pages of text messages that show the heat was not working and the male Landlord was harassing both his family and the Tenants. Further the Tenants said the text messages show the Tenants were disturbed by the Landlords actions. Text message on March 4, 2016 says the male Landlord spit in the female Landlord's face, March 9, 2016 indicates RCMP have been called to the house, March 13, 2016 Tenants are requesting the Landlords noise to be reduced, February 18, no heat in the rental unit and the last text message in the string is a message from the female Tenant saying she is scared of the male Landlord.

The Tenants said in closing that the Landlords misrepresented themselves at the start of the tenancy and they did not provide the services and facilities that were agreed to at the start of the tenancy so the Tenants believe the Landlords should compensate the Tenants.

Analysis

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the undisputed testimony and evidence of the Tenants as the Landlord did not attend the hearing but have been deemed to be serviced the Hearing package as required by section 89 of the Act I find the following:

1. I accept the Tenants text messaging evidence and testimony as the Tenants said this as the way the parties communicated during the tenancy. In the text messaging it is evident that the Landlords disturbed the Tenants with noise and domestic incidents between the female and male Landlords, but these incidents were not directly targeted at the Tenants. Therefore the Tenants may have been disturbed by noise but there is no direct evidence of harassment by the male Landlord against the Tenants. Consequently I find the Tenants claim for loss of quiet enjoyment of the rental unit because of the Landlords' actions has not reached the level of seriousness to warrant compensation. I dismiss the Tenants claim for loss of quiet enjoyment of \$3,600.00.
2. With regard to the Tenants claims of loss of facilities or services I accept the Tenants' testimony and evidence that heat was not provided in the rental unit from February 18, 2016 to the end of the tenancy, the Landlords did not maintain common areas and the

yard which resulted in a loss of use for the Tenants. Further I accept the Tenants were restricted from using the laundry facilities and incurred expenses to do laundry. Consequently I award the Tenants \$135.00 for extra utility payments which were not received and an additional \$200.00 per month for 3 months for the lack of heat in the rental unit in the amount of \$600.00. Further I accept the Tenants claim for \$240.00 for laundry expenses as the tenancy agreement says laundry was included in the tenancy and the Tenant were restricted from using the laundry facilities in the rental unit.

3. The Tenants have also requested \$1,440.00 in compensation for stress and emotional trauma. I have reviewed the evidence submitted and I have not found any evidence that the Tenants have suffered a trauma that meets the level of seriousness to warrant compensation. I dismiss the Tenants' claim for \$1,440.00 for stress and emotional trauma.
4. Further as the Tenants chose to end the tenancy and move out I dismiss the Tenants claims for moving costs and costs associated with their new tenancy as these costs were their choice and are not the Landlords' responsibility.
5. The Tenants are also claiming \$170 for two hours of work to repair the water feature in the common area. I find this is excessive and there is no corroborative evidence to support the claim outside of the bill the Tenant prepared. I dismiss this claim without leave to reapply.
6. Further the Tenants have claimed \$200.00 to prepare the hearing information. This is not an eligible claim under the Act therefore I dismiss the claim without leave to reapply.
7. The Tenants have also requested the cost of a heater that they purchased but the Tenants have not provided a receipt therefore the actual cost is not proven and it is unclear when the heater was purchased. I dismiss this claim.
8. With regard to the Tenants' security and pet deposits the Act says: Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit. And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord(a) may not make a claim against the security deposit or any pet damage deposit, and(b) must pay the tenant **double the amount of the security deposit, pet damage deposit, or both, as applicable**. I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing by text messaging on June 6, 2016. The Landlord did not repay security or pet deposits to the Tenants within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address, nor did the Landlord apply for dispute resolution by June 21, 2016. Consequently I find for the Tenants and grant an order for double the security and pet deposits of \$475.00 each in the amount of \$950.00 X 2 = \$1,800.00.

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

Loss or facilities and services:	\$ 975.00
Double the security and pet deposits	\$ 1,800.00
Recover filing fee	\$ 100.00
Subtotal:	\$2,875.00

Conclusion

A Monetary Order in the amount of \$2,875.00 has been issued to the Tenants. A copy of the Order must be served on the Landlords: 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: June 21, 2016

Residential Tenancy Branch