



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNSD MNDC FF
Tenant: ERP MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application was received at the Residential Tenancy Branch on March 8, 2016 (the “Landlord’s Application”).

The Landlord applied for the following relief pursuant to the *Act*: a monetary order for money owed or compensation for damage or loss; an order permitting the Landlord to retain all or part of the security deposit or pet damage deposit; and an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on June 16, 2016 (the “Tenant’s Application”).

The Tenant applied for the following relief pursuant to the *Act*: a monetary order for the cost of emergency repairs; a monetary order for money owed or compensation for damage or loss; an order compelling the Landlord to return all or part of the security deposit; and an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.B. and M.F. The Tenant attended the hearing on her own behalf, and was assisted by L.N. All parties giving evidence provided their solemn affirmation.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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 and Procedural Matters

Both parties confirmed receipt of the other parties' evidence packages. However, during the course of the hearing the Tenant advised that one further piece of evidence – a letter from her counsellor – had been submitted on July 5, 2016, the day before the hearing.

This evidence was submitted late, contrary to Residential Tenancy Branch Rule of Procedure 3.14. Further, the Landlord's agents objected to its admission as they had not received it. Accordingly, I have not considered it in this Decision.

Both parties confirmed receipt of the remainder of the evidence submitted.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to an order permitting the Landlord to retain all or part of the security deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to a monetary order for the cost of emergency repairs?
5. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
6. Is the Tenant entitled to an order compelling the Landlord to return all or part of the security deposit?
7. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the written tenancy agreement between the parties was submitted into evidence. Both the tenancy agreement and the parties confirmed they entered into a fixed-term tenancy for the period from March 1, 2015 to February 28, 2017. Rent in the amount of \$2,750.00 was due on the first day of each month. A security deposit of \$1375.00 was paid by the Tenant. At the end of the tenancy, the Landlord retained \$1,000.00 of the security deposit pending the outcome of this hearing.

The Strata Bylaws were incorporated into the tenancy agreement pursuant to a Form K – Notice of Tenant's Responsibilities, signed and dated by the Tenant on February 23, 2015 (the "Form K").

As described in greater detail below, the Tenant found the living arrangements unsuitable. Accordingly, she sublet the rental unit without the Landlord's agreement from late-November 2015 to February 2016. The Tenant charged the new occupants \$3,500.00 per month during this period.

The parties negotiated an early end to the tenancy, and the Tenant vacated the rental unit on or about February 29, 2016.

The Landlord's Claims

Breach of Strata Bylaw

The Landlord says the Tenant breached the tenancy agreement by subletting the rental unit without the consent. The Landlord claims \$500.00 for this breach, pursuant to the Strata Bylaw 25.

The Landlord directed me to Strata Bylaw 25. This provision permits the Strata Council to levy a fine not to exceed \$500.00 for each contravention of Strata Bylaw 41, which restricts the number of strata lots that may be rented.

The Landlord testified that the Tenant requested consent to sublet the rental unit, in writing. Citing rental restrictions, the Landlord refused consent. However, the Landlord's evidence was that the Tenant proceeded to sublet the rental unit without the Landlord's consent.

During the hearing, the Landlord offered oral testimony suggesting that because the Strata Bylaws are silent on the question of sublets, they are not permitted. It was submitted that although the tenancy agreement, addendum, and Form K do address sublets that will not be unreasonably withheld, the Strata Bylaw provides a basis for reasonably withholding consent.

In reply, the Tenant acknowledged she sublet the rental unit without the consent of the Landlord. However, she indicated in her testimony that she saw simply trying to extract herself from a stressful situation.

The Tenant also observed the Strata Bylaw referred to by the Landlord merely restricts the number of rental units permitted, not whether or not she could sublet the rental unit. Indeed, in email correspondence submitted with the Landlord's documentary evidence, the Landlord acknowledges the Strata Bylaws are silent with respect to sublets.

Further, the Tenant referred to clause 16 of the tenancy agreement between the parties, which states that a "tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent."

Move-in Fee

In addition, the Landlord claimed the Tenant owes a move-in fee of \$500.00 pursuant to Strata Bylaw 40.

Two versions of the Strata Bylaws were provided with the Tenant's documentary evidence. Both versions state: "A resident must pay a non-refundable move-in fee of \$500 for any move into their strata lot, and any expenses incurred by the Strata Corporation attributable to the resident move-in will be added to the fee".

In reply, the Tenant advised that her move-in fee was waived when she moved in because it was not necessary to utilize any of the common areas. She provided a copy of the returned cheque with her documentary evidence. The Tenant submitted that a move-in fee for the sublet is not appropriate in these circumstances. The Landlord had no knowledge that the move-in fee had been waived.

The Tenants' Claims

The Tenant testified that extensive renovation work began at the rental property soon after she moved into the rental unit. She stated the first notice she received of the project was in a document dated March 18, 2015, which describes a waterproofing and renovation project that had been approved in June 2014. A copy of the notice, received in her mailbox, was submitted with the Tenant's evidence.

The Tenant testified the renovation work and the resultant stress diminished her quiet enjoyment of the property, and resulted in health issues and loss of work. She stated she would not have accepted the tenancy if she had known about the extent of the renovation work being planned.

The Tenant provided email correspondence and other documentation describing the extent of the renovation.

The Tenant also testified that the rental unit had not been cleaned when she moved in, and that requested repairs to the rental unit were not completed in a reasonable time. The Tenant's requests included repair of an open hole in the bathroom ceiling, replacement of carpet, unsealing of windows, painting of walls in living room, replacement of a cracked window pane, replacement of a broken mirror, electrical work, and plumbing work.

The Tenant's claims are conveniently summarized on a Monetary Order Worksheet she provided. I will address each in turn.

U-Haul – storage locker

The Tenant claims she is entitled to recover the cost of a storage locker in the amount of \$1,072.00 for eight months. She says some of her items, including a mirrored door, needed to be stored off-site during the renovation project. The Tenant provided receipts in support.

In reply, the Landlord testified there were on-site storage options available to the Tenant and that the Tenant chose to store items off-site.

U-Haul – truck rental

The Tenant claims \$168.80 for truck rentals to move her belongings into storage.

In reply, the Landlord stated there were other storage options available, and that the Tenant elected to end the fixed-term tenancy early.

Advent Property Management

The Tenant wished recover the \$1,000.00 security deposit retained by the Landlord.

The Landlord wishes to retain the security deposit, to be applied to the \$1,000.00 sought.

Stress counselling

The Tenant claimed \$367.50 for counselling related to stress she says was caused by the renovations and the Landlord's conduct. Receipts were provided in support.

The Landlord submitted there is no evidence the Tenant's counselling was related to the renovations or the Landlord's conduct.

Carpet replacement

The Tenant has claimed \$1,191.13 for carpeting in the rental unit she replaced at her own expense. She advised this was done with the owner's consent because the Landlord did not respond quickly enough to her request. A receipt in the amount claimed was submitted in the Tenant's documentary evidence.

The Landlord acknowledged the owner consented to the carpet replacement by the Tenant, but that it was understood at all times that the Tenant would bear the expense.

Prescriptions

The Tenant claims \$335.00 for prescriptions she stated were necessary because of allergies she developed as a result of stress and construction work in the building, including a Epi-Pen and other medication. The Tenant has provided pharmacy receipts totalling \$130.74 for these expenses.

The Tenant testified she was hospitalized as a result of the allergic reactions, and provided documentary evidence of hospitalization.

The Tenant subsequently attended an appointment with her doctor on September 16, 2015. The doctor's clinical notes suggest the Tenant was unsure of what triggered the reaction she had experienced a month earlier, and that she had been well since.

Subsequent allergy testing in December 2015 confirmed allergies to mold, mites, and other allergens.

In reply, the Landlord testified that no evidence has been submitted confirming the Tenant's allergies were caused by the construction work or stress, and therefore the need for medication cannot be attributed to these factors.

IKEA Closet

The Tenant provided oral testimony that she replaced a closet in the rental unit with an IKEA closet that cost her \$1,246.56. She has provided three IKEA receipts in the amount claimed. The Tenant acknowledges she left the closet in the rental unit when she vacated as a "value-added" component.

The Landlord advised they understood the Tenant would be taking the IKEA closet with her, and did not ask the Tenant to leave the IKEA closet behind.

Moving boxes

The Tenant testified that she purchased moving boxes at a cost to her of \$69.44. Receipts submitted show paying of \$60.00 towards an invoice in the amount claimed.

The Landlord submitted it was the Tenant's choice to move out of the rental unit prior to the expiry of the fixed-term tenancy agreement, and that moving costs should be borne by the Tenant in any event.

Stationary expenses

The Tenant claimed she incurred mail forwarding costs of \$107.00. The Tenant submitted receipts in totalling \$108.31 in support of this claim.

Again, the Landlord submitted it was the Tenant's choice to move out of the rental unit prior to the expiry of the fixed-term tenancy agreement, which was agreed to once the Tenant provided a suitable tenant to replace her.

Loss of work opportunity

The Tenant claims \$6,000.00 for loss of work opportunity. The Tenant is an actress, model, and costume designer. She frequently works from home. In an email from the Tenant's agent, dated June 18, 2016, the Tenant is described as a "top commercial talent".

The Tenant testified she lost three callback opportunities as a result of the stress she was experiencing.

The Landlord referred me to an email from the Tenant to her agent, dated August 20, 2015, in which she responded to a callback request by stating:

"I'm just at emergency
I think I have food poison.
And...of course there is a rash on my face.
I will try and make both. But cannot guarantee
At this point." (reproduced as written)

The Landlord testified the Tenant was filming five days later.

Fob replacement

The Tenant claims \$125.00 she paid to replace a fob to access the rental unit.

Documentary evidence submitted by the Landlord confirms two replacement fobs were provided to the Tenant in or about September 2015. A broken fob was replaced at the owner's expense. A second fob for the Tenant's daughter was supplied at the Tenant's expense.

Loss of quiet enjoyment

The Tenant testified her right to quiet enjoyment was impacted during the tenancy. As noted above, extensive renovations began on her floor roughly one month after moving into the rental unit. The Tenant says the Landlord knew of the upcoming renovations, and that she should have been advised. The Tenant's evidence was that she would not have accepted the tenancy if she had known such an extensive renovation was about to begin.

Further, the Tenant provided oral testimony that she was unable to use two of three entrances to her rental unit during the construction project.

The Tenant also indicated she had limited access to laundry facilities in the building while renovations were taking place in that area.

The Tenant also indicated there was construction noise and inconvenience almost every day from roughly 7:00 a.m. to 7:30 p.m., which included incessant jackhammering and noise from workers.

The Tenant also advised that, because of flooding in the building, two holes which she estimated to be 2' x 3' each were left in the ceiling in her rental unit.

In addition, the Tenant testified that her daughter could not use her bedroom due to construction.

Further, the Tenant, who works from home a significant amount of time, indicated she had to rent alternate work space to prepare for auditions. No receipts or other evidence in support of this claim was offered by the Tenant.

The Tenant also stated she felt intimidated and bullied by the Landlord.

In reply, the Landlord confirmed they were aware of the approved renovation project but that plans had been progressing very slowly while waiting for permits. The Landlord stated they did not know when it would begin. However, the occupants of the building were notified as soon as the work was scheduled.

The Landlord also testified the work took place from April to September 2015, a period of six months. The Landlord submitted that work did not take place seven days per week as alleged, but acknowledged work could have taken place during the hours as claimed by the Tenant.

In addition, the Landlord advised the owner of the rental unit reimbursed the Tenant for laundry expenses.

General damages – mental distress

The Landlord testified that the renovation project and her dealings with the Landlord caused considerable stress. She seeks \$1,000.00 under this head.

In reply, the Landlord submits the Tenant had not proven her mental distress was caused by the renovations or the Landlord's actions.

Aggravated damages

The Tenant seeks \$2,200.00 in aggravated damages. She stated in her oral testimony that the Landlord knew or should have known about the anticipated renovation work. She also indicated on the Monetary Order Worksheet that this claim is based on the Landlord's failure to make timely repairs to the rental unit, for refusing to accept a new tenant at the Tenant's request, and

In reply, the Landlord provided an example of the owner's willingness to perform repairs in a timely manner and at considerable expense. One of the repairs requested by the Tenant was to unseal the windows to the rental unit. However, the building is a heritage building and the city requires skilled tradespeople to perform the work. The Landlord advised the work was done as soon as possible at a cost to the owner of \$5,890.00.

In addition, the Landlord stated the Landlord and owner responded reasonably to the Tenant's requests. The oral testimony of the Landlord was that the owner invested approximately \$10,000.00 in repairs to the rental unit in 2015. As examples, the Landlord stated the doors to the rental unit were all re-keyed, exterior window frames were filled and repainted by June 2015, lighting and baseboard issues were addressed by an electrician at a cost to the owner of approximately \$900.00, and the owner paid \$1,300.00 to install track lighting in the rental unit.

Analysis

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

Landlord's Claims

Breach of Strata Bylaws

The Landlord has claimed entitlement to a fine in the amount of \$500.00 for breach of the Strata Bylaws.

The Landlord relies on Strata Bylaw 25, which permits the Council to levy a fine for each contravention of Strata Bylaw 41. As acknowledged by the Landlord during the hearing, Strata Bylaw 41 places restrictions on rentals.

An email from L.B. to the Tenant, dated November 17, 2015, confirms "subletting is not allowed whatsoever in the building." As added support, the email included a quote from the strata council president, who stated: "From the strata perspective, all our bylaws allow for is a limited number of rentals by suite owners. Since there is no mention of subletting, it is not allowed."

Accordingly, I find there was no breach of a Strata Bylaw. According to the Landlord's evidence, the Strata Bylaws were silent on the matter of sublets.

Move-In Fee

The Landlord sought to recover a \$500.00 move-in fee arising when the Tenant sublet the rental unit.

The Tenant acknowledged she sublet the rental unit without consent. The move-in fee was, at all material times, \$500.00. Accordingly, I find the Landlord has established an entitlement to this amount.

Therefore, I allow the Landlord \$500.00 in for the move-in fee.

Tenant's Claims

U-Haul, Moving, and Stationary expenses

I find there is insufficient evidence to support the Tenant's claims for reimbursement for the storage, hauling, and stationary expenses she incurred. I find there were other storage options available to the Tenant, and that she moved voluntarily before the end of the fixed-term tenancy.

Advent Property Management

For the reasons set out above, I find the Tenant is entitled to recover a portion of the security deposit retained by the Landlord.

Stress counselling & Prescriptions

I find the Tenant has not provided sufficient evidence her health concerns and related expenses were caused by the renovation project or the Landlord's conduct.

Carpet replacement

I find the agreement between the parties was that the Tenant would replace the carpets in the rental unit at her own expense. Accordingly, I decline to award the Tenant the cost to install the carpeting. Again, the Tenant moved voluntarily before the end of the fixed-term tenancy.

IKEA Closet

The IKEA closet was purchased and installed by the Tenant. However, I find the Tenant left it behind at the end of the tenancy when there was no obligation to do so. Accordingly, I decline to award the Tenant the cost of the closet. Again, the Tenant moved voluntarily and did not take the closet with her.

Loss of work opportunity

The Tenant has claimed a loss of work opportunity in the amount of \$6,000.00. Although she has provided evidence she received call backs but could not attend, there is insufficient evidence for me to conclude that she would have been the successful candidate, or that the

reason she was unable to attend was related to the renovation project. Indeed, the Tenant's own evidence suggests it was her belief she was hospitalized for food poisoning.

Fob replacement

The Tenant also sought to be reimbursed for the cost of replacing the fob. However, a replacement fob was provided to the Tenant at the Landlord's expense. The expense being claimed by the Tenant arose when she requested a second fob. I find there is insufficient evidence before me to conclude the Tenant is entitled to be reimbursed for this expense.

Loss of quiet enjoyment

The Tenant claimed a loss of quiet enjoyment during the course of the tenancy. Residential Tenancy Branch Policy Guideline #6 ("Guideline #6") offers some direction when considering a claim for loss of quiet enjoyment. It confirms the *Act* establishes a right to quiet enjoyment, including reasonably privacy and freedom from unreasonable an ongoing noise.

The right to quiet enjoyment is not absolute. Guideline #6 states:

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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 tenancy in making repairs or completing renovations."

With respect to quantifying loss of quiet enjoyment, Residential Tenancy Brach Policy Guideline #16 ("Guideline #16") states:

"If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant."

I find the tenant's right to quiet enjoyment of the rental unit was impacted by the disruption caused by the renovation project for six months as described in the Tenant's evidence.

Further, I find that, in light of the Tenant's breach of the tenancy agreement, and considering the Policy Guidelines above, a reasonable award for the Tenant's loss of quiet enjoyment for the roughly six months of construction is \$1,650.00.

General damages – mental distress

The Tenant sought general damages for mental distress. I find there is insufficient evidence before me to conclude that the Tenant's counselling expense was incurred as a result of the construction project or the Landlord's conduct.

Aggravated damages

Aggravated damages of \$2,000.00 were claimed by the Tenant. Residential Tenancy Branch Policy Guideline #16 ("Guideline #16") elaborates upon a claim for damages under this head. It states:

"These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless or indifferent behaviour. They are measured by the wronged person's suffering."

There is insufficient evidence before me to conclude the stress and anxiety the Tenant testified was caused by the construction work and the Landlord's conduct. In addition, I note that landlords have a right and a responsibility to make appropriate repairs and renovations to rental properties, and that this may result in some inconvenience to tenants.

Therefore, in consideration of the above, I find the Landlord owes the Tenant \$1650.00 for loss of quiet enjoyment during the course of the renovation project while the Tenant occupied the rental unit.

Set Off of Claims

I have found the Landlord has established an entitlement to \$500.00 on account of a move-in fee described in the Strata Bylaws. However, the Landlord retains \$1,000.00 of the Tenant's security deposit pending the outcome of this hearing. Accordingly, I find the Landlord must reimburse the Tenant \$500.00 of the security deposit.

In addition, I have found the Landlord owes the Tenant \$1,690.00 for loss of quiet enjoyment of the rental unit. Accordingly, the Landlord must pay the Tenant this amount.

In total, I find the Landlord owes the Tenant \$2,190.00. I order, pursuant to section 67 of the *Act*, that the Landlord pay the Tenant \$2,190.00.

As to the filing fees the parties paid for the cost of these Applications I find both parties had partial success. Therefore, I do not award compensation for their filing fees.

Conclusion

I find the Tenant is entitled to a monetary order in the amount of \$2,190.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 13, 2016

Residential Tenancy Branch