Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, RR, FF. O

For the landlords – MND, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for an Order to deduct the cost of repairs, services or facilities from rent; other issues; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; other issues; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Are the landlords entitled to a Monetary Order for damages to the unit, site or property?
- Are the landlords entitled to an Order permitting them to keep all or part of the security deposit?

Background and Evidence

The parties agreed that the tenants originally moved into the lower unit in this property on July 15, 2015. This was a fixed term tenancy which was due to end on December 31, 2015. The parties agreed that the tenants could move into the upper unit on September 01, 2015 and as the landlords did not ask the tenants to sign a new tenancy agreement then this was a verbal agreement for a month to month tenancy. The parties agreed that the rent for this upper unit was $1,100.00 per month and was due on the 1st of each month. The tenants paid a security deposit of $500.00 on May 01, 2015. The tenancy ended by mutual agreement on May 28, 2016 and the tenants were given one free month's rent.

The parties also agreed that the landlord failed to complete a move in condition inspection or the rental unit when the tenants took possession. The tenants provided a forwarding address in writing on May 28, 2016.

The tenants' application

The tenants testified that during their tenancy they had always had cable and internet service. On April 20, 2016 the landlords wrote to the tenants and advised them that this service would be discontinued within 24 hours. The service was disconnected on April 22, 2016. The tenants testified that the landlord did not provide any reduction in rent for

the balance of April and for May for the loss of this service; the tenants therefore seek compensation of $100.00 from the landlords.

The tenants seek compensation of $1,100.00 for the loss of storage, loss of privacy, for stress, harassment and mischief, for withholding the tenants' property and for lack of proper notice to enter the property. The tenants testified that they had used the garage to store tires and bikes since moving into the upper unit. They received a letter from the landlords with two dates on; at the top it said May 04, 2016 but the date at the bottom was September 01, 2015. In this letter the landlords stated they had decided to charge the tenants $50.00 a month for storage in the garage. The tenants testified that the landlords had previously agreed that they could use the garage for storage. The landlords sent a letter on May 01, 2016 stating that it was never their intention for the tenants to use the garage as storage and that from May 05, 2016 their storage changed from the garage to the loft. The tenants testified that this implied that the landlords were well aware the tenants were using the garage to store some belongings as the tenants had assumed that as the garage was attached to their suite that this was their storage area. The tenants testified that they had enjoyed the use of the garage from September 01, 2015 without any concerns from the landlord and had even arranged to place the landlords' mail in the garage for them as they had not changed their address.

The tenant testified that when he picked up mail for the landlord on May 04, 2016 he opened the garage door from the kitchen and it had been blocked off with another door. The tenants sent the landlord a text message saying they had mail for them but could not access the garage; it was then that the landlords sent the letter requesting $400.00 for storage. The tenants had to call the police to get the landlords to return their property. The police arrived and made the landlords return the tenants' property immediately.

The tenants testified that the landlords were living on and off in the cul-de-sac outside the property. This caused issues for the tenant with privacy as the landlords would enter the gardens. The front garden was allocated to the upper tenants and the rear garden

was allocated to the lower tenants. The tenants testified that they had been maintaining the garden and there was no arrangement in place for the landlords to do this work. The landlords would walk around the property, doing garden maintenance and taking photos if they were not happy with the tenants' maintenance on the garden. The tenants agreed that the landlords were away in the winter months. The tenants testified that as they used the garden daily the landlords' presence was intrusive on their quiet enjoyment of their unit. The tenants testified that the landlords did not provide 24 hours written notice to come onto the property and the tenants felt like they were living in a glass house with no privacy.

The tenants testified that they suffered stress and harassment from the landlords' actions and mischief which concerned the landlords' constant letters, physical presence at the property, removing the Wi-Fi and preventing access to the garage and the tenants' property.

The tenants testified that they seek to recover their security deposit of $500.00. The landlord failed to do the move in condition inspection report with the tenants although they did walk around the unit. At the end of the tenancy they did a move out report but the tenants disagreed with the landlords' comments and as no move in report was completed the tenants refused to sign the move out report.

The landlords disputed the tenants' claims. The landlords testified that they had called the RTB for advice before removing the Wi-Fi and cable and put it in writing to the tenants. The landlords agreed they only gave 24 hours to remove this service but they calculated what the tenants should be reimbursed for the reminder of April and are willing to provide the amount of $11.50 to the tenants.

The landlords testified that it was never their intention for the tenants to use the garage as storage. The tenants were never given the garage code to access it from the drive. When the landlords returned from a trip they found the tenants' bikes and tires in the garage. The landlords objected to this as they had their belongings stored in the garage.

When they first walked through the unit they had asked the tenants if they wanted the garage and they said no. It was agreed then that they would use the loft for storage. The landlords' tires were stored under the deck and the tenants said they would store their tires there also. The landlords testified that the letter sent to the tenants was to confirm that their storage was the loft not the garage. The door was put up inside to prevent the tenants' access to the garage. The landlords agreed the tenants did have access to the garage to put the landlords' mail in.

The landlords testified that they still had a right to come onto the property to access the garage and to do yard maintenance. When they returned to the property after the winter they found the tenants' Christmas tree still in the garden so this was removed, the drive had not been shovelled of snow and the grass had not been cut. The landlords decided to take over the yard maintenance as they wanted to sell the house and told the tenants verbally of this. Prior to this the tenants always socialized with the landlord, they visited them at their trailer and eat and drank with them. There was no issue at that time with the landlords being there and the animosity started later when the For Sale sign went up. The landlords testified that the lower tenants had no problem with the landlords being on the property.

With regard to the security deposit; The landlords referred to an agreement the tenants reached with the landlords' realtor when they signed the mutual agreement to end tenancy. As part of this agreement the tenants also agreed the landlords could keep $200.00 of the security deposit.

The tenants testified that they only agreed the landlord could keep $200.00 of the security deposit in good faith, but as this was prior to the landlords preventing their access by bolting another door up in the garage; the tenants withdraw this permission and seek to recover all their deposit.

The landlords' application

The landlords testified that they had a verbal agreement with the tenants that they could paint the upper unit but the tenants were told not to paint the doors. The tenants went

ahead and painted over the French doors. That the end of the tenancy the tenant asked the landlord if he should remove this paint and the landlords responded only if he could remove it all. The tenant only partially removed the paint and the landlords referred to their photos showing the painted doors and the tenants attempt to remove some of the paint. It was the purchaser of the property who said in the end not to bother removing the paint. They said they would deal with the doors and the landlords gave the purchaser a $1,500.00 discount on the price of the home because of the doors. The landlords do however seek to recover what it would have cost to replace the doors of $648.45 plus $77.81 for tax and $100.00 for installation.

The landlords testified that the tenants subjected them to undue stress when they were selling the property due to the French doors and should not have started to scrap the paint off the doors. This decreased the value of the property and the landlords seek to recover $1,500.00 from the tenants.

The tenants testified that the landlords agreed the tenants could paint the unit; the doors were damaged when they moved into the unit with scratches and paint speckles. The tenants testified that the verbal agreement they had with the landlords did not mention not to paint the doors; so due to the damage on the doors the tenants painted them. At the end of the tenancy the landlord said the tenant should scrape the paint off the doors so the tenant started this work and after meeting with the landlords' realtor he negotiated that the tenants were not to touch the doors any further.

The tenants referred to the email provided in the landlords' evidence with questions from the purchasers regarding the property, none of these questions mentioned the painted doors. If the doors had been a concern the realtor would have mentioned it or the purchasers would have had something in writing saying they wanted a price reduction of $1,500.00. The tenants suggest therefore that this reduction did not exist.

The landlords testified that the email was only to do with the building inspector reports and not the purchasers. It was from the landlords' relator regarding the home

inspection. The price reduction for the damaged doors was a verbal agreement between the landlords and the purchaser.

The landlords seek an Order to keep all the security deposit.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenants' application

Loss of service of Wi-Fi and cable service $100.00 – although there was no written tenancy agreement to document that this service was included in the rent the tenants had enjoyed the use of this service when they lived in the lower suite and it was part of that tenancy agreement, when the tenants moved into the upper suite they continued to use this service and were not asked to contribute towards it. I therefore find it was implied that this service was included in the rent. I do find, however, that this is not considered to be an essential service or facility and as such the landlords are entitled to end this service with 30 days written notice and a rent reduction equivalent to the cost of the service. I have therefore considered the bill for this service provided in the landlords' documentary evidence and find that for both units the landlord paid $77.00 per month for cable and $63.00 per month for the internet. This would equate to a monthly charge for these services of $140.00. As this was shared between both units then it would be $70.00 per unit if both tenants in each unit were paying for this service. As the service was not removed until April 22, 2016 then I have prorated the amount due for April of $20.99 and for May of $70.00 to a total amount of **$90.99**.

Compensation $1,100.00 – the tenants testified that they had always used the garage for storage since moving into the upper unit and this facility was removed on May 04, 2016. The landlords testified that the tenants were aware that their storage area was the loft of their unit and not the garage. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version

of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As the parties did not have a written agreement concerning storage then I find it is equally probable that the verbal agreement was for the loft area or the garage. As it is almost impossible for a third party to interrupt a verbal agreement when the parties contradict each other, then I find this is one person's word against that of the other and the burden of proof has not been met by the tenants; however, as the landlords have also not proven that the storage was for the loft then the landlords are not entitled to charge the tenants $50.00 per month for storage for the garage.

Lack of privacy, harassment stress and mischief $1,100.00- There was no written agreement in place to state that the tenants were to maintain the garden at the front of the property, and the landlords claimed the lower tenant had no issue with the landlords doing work in the rear garden and the landlords still had to enter the property to access the garage. Furthermore the landlords are entitled to park their trailer off the property and if the tenants feel this interfered with their privacy it would be no more than if the landlords lived in the other unit. I find the tenants claim for lack of privacy cannot be proven under the *Act*. A claim of this nature can only be made if the landlords have breached the *Act* and I can find no breach regarding the terms of the tenancy agreement regarding access on to common areas or to do yard maintenance.

Landlords are entitled to serve tenants letters concerning the tenancy and by doing so this cannot be considered harassment, furthermore I find the animosity between the parties only occurred towards the end of the tenancy and prior to that the parties appeared to be civil and even friendly. Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". I am not satisfied that the landlords have not engaged in a course of vexatious comment or conduct that could be deemed to be harassment of the tenants. Rather the parties have suffered differing opinions concerning what the tenancy entails and their rights and obligations under the *Act*.

While I accept the landlords' actions of securing the garage door was petty this again would not constitute an award for compensation for mischief or harassment and the tenants' belongings were returned immediately when the police arrived. The tenants claim to recover $1,100.00 is therefore dismissed.

The security deposit $500.00 - I refer the parties to s. 24(2) of the *Act* which states:

> *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 23 (3)* [2 opportunities for inspection]*,*
> > *(b) having complied with section 23 (3), does not participate on either occasion, or*
> > *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, as the landlords did not comply with s. 24(2) by doing a move in condition inspection report at the start of the tenancy then the landlords have extinguished their right to file a claim to keep the security deposit; however, s. 38(4) of the *Act* states:

> *(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*
>
> > *(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant*

It is clear from the evidence provided that as part of the Mutual Agreement to End Tenancy that the tenants agreed to allow the landlord to keep $200.00 of the security deposit. Therefore I find the tenants are entitled to recover **$300.00** of the security

deposit pursuant to s. 38(6)(b) of the *Act* and the landlords may retain the balance of **$200.00** pursuant to s. 38(4)(a) of the *Act*.

The landlords' application

Cost of the French doors plus tax and installation $826.26 - the landlords agreed that they did not replace the French doors in the unit which had been painted by the tenant. The landlord also agreed that she had given the tenant permission to remove the paint if it could all be removed. The tenants testified that they started to do this work and then the landlords' realtor negotiated with them that the work should stop. As the tenants were prevented from completing the work to remove the paint and restore the French doors to their original finish then the landlords have not mitigated the loss. Furthermore, as the landlords did not purchase new doors, pay tax or pay for installation then they are not entitled to recover this from the tenants as they did not suffer this loss. This section of the landlords' claim for $826.26 is dismissed.

Compensation for reduction in house price $1,500.00 – The landlords testified that they reduced the price of their property due to the damage to the doors; however, there is insufficient evidence from the landlord that they reduced the price of the property for their purchaser because of the French doors and not for some other purpose or negotiation. The landlords testified that it was a verbal agreement between them and the purchaser. Without sufficient evidence to support this section of their claim I must dismiss the landlords' claim for $1,500.00.

As both parties claims have some merit both parties must bear the cost of their own filing fees.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim to keep the security deposit. I Order the landlords to retain the amount of **$200.00** from the security deposit.

The reminder of the landlords claim is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$390.99**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The reminder of the tenants' claim is dismissed without leave to reapply.

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 26, 2016

Residential Tenancy Branch