



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was scheduled to address the Tenant's application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that on December 18, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents she submitted to the Residential Tenancy Branch on December 30, 2015 were sent to each Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Landlord appeared at the hearing.

Preliminary Matter

I have reviewed all of the documentary evidence submitted by the Tenant. It is important to note that I was unable to read a significant number of the text messages submitted in evidence due to the poor quality of those submissions.

Issue(s) to be Decided

Is the Tenant is entitled to compensation pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice?
Is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence

The Tenant stated that:

- this tenancy began on February 01, 2013;
- at the end of the tenancy she was paying monthly rent of \$900.00;

- on June 24, 2015 she found a Two Month Notice to End Tenancy for Landlord's Use posted on the door of the rental unit;
- the Two Month Notice to End Tenancy declared that the tenancy was ending because the landlord or a close family member of the landlord intended to occupy the rental unit;
- the Two Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by September 01, 2015;
- the Tenant vacated the rental unit on August 04, 2015;
- the Landlords began renovating the rental unit after the Tenant moved out;
- on November 27, 2015 she spoke with neighbours on both sides of the rental unit and they both told her that the unit has been re-rented;
- the neighbours on both sides of the rental unit told her that the new occupant(s) are not related to the Landlord.

The Tenant is seeking compensation, pursuant to section 51 of the *Act*, because the Landlords or a close family member of the Landlords did not move into the rental unit.

The Tenant is seeking compensation of \$1,350.00 because of deficiencies with the rental unit.

The Tenant is seeking compensation of \$1,350.00, in part, because there was mould in the main bathroom. In support of this claim the Tenant stated that:

- the rental unit was very old and the bathroom was not equipped with a fan;
- due to inadequate ventilation mould would grow on the walls and ceilings of the bathroom;
- she frequently used bleach to eliminate the mould;
- she reported the problem with mould to the Landlord on several occasions throughout the tenancy; and
- the Landlord never installed a fan in the bathroom.

The Tenant is seeking compensation of \$1,350.00, in part, because there were holes in the window screens and there was a broken window pane in the den. In support of this claim the Tenant stated that:

- there was a two inch crack in one of the window panes;
- the window screens in the den and in several other locations had holes in them;
- the glass was broken and the screens had holes in them at the start of the tenancy;
- when the tenancy began she was told the screens would be replaced and the cracked window would be repaired;
- she reported the problem with the broken window and damaged window screens on several occasions throughout the tenancy;
- she was unable to use the den for her baby's room because of the cracked window and the holes in the widow screen; and
- the window/ window screens were never repaired.

The Tenant is seeking compensation of \$1,350.00, in part, because the washing machine and clothes dryer did not work properly. In support of this claim the Tenant stated that:

- a washing machine and clothes dryer was provided with her rental unit;
- approximately six months after the tenancy began the washing machine stopped functioning properly;
- to use the washing machine she had to hold the dial in the “fill” position until it filled with water, after which it would function properly;
- approximately six months after the tenancy began the clothes dryer stopped functioning properly;
- the dryer would not stop when she opened the door and she had to turn the timer to the “off” position to stop the dryer drum from turning;
- she reported the problem with the washing machine/clothes dryer on several occasions throughout the tenancy; and
- the appliances were never repaired.

The Tenant is seeking compensation of \$1,350.00, in part, because of problems with several electrical outlets. In support of this claim the Tenant stated that:

- the electrical outlets in the living room, kitchen, and one bedroom were loose and would sometimes “spark”;
- almost all of the electrical outlets were installed upside down;
- the breaker would trip when she used the electrical outlet in the hallway; and
- she had to use an extension cord to vacuum some areas of the house because she could not use the outlet in the hallway;
- she reported the problem with the outlets on several occasions throughout the tenancy; and
- the outlets were never repaired.

The Tenant is seeking compensation of \$1,350.00, in part, because the fence on the residential property was in a state of disrepair. In support of this claim the Tenant stated that:

- this rental unit is in a “four-plex”;
- the two sides of the residential complex are divided by a fence;
- the fence is rotted;
- she would not allow her child to play in the yard unattended for fear the fence would fall on him;
- she reported her concerns with the fence on several occasions throughout the tenancy; and
- the fence was never repaired.

The Tenant is seeking compensation for mailing costs.

The Tenant is seeking compensation for the fee paid for this Application for Dispute

Resolution as well as for a previous Application for Dispute Resolution that she filed in regards to this tenancy.

Analysis

On the basis of the undisputed evidence I find that:

- on June 24, 2015 the Tenant was served with a Two Month Notice to End Tenancy in which the Landlords declared they were ending the tenancy because the landlord or a close family member of the landlord intended to occupy the rental unit;
- the Tenant vacated the rental unit on August 04, 2015; and
- on November 27, 2015 the rental unit was being occupied by parties not related to the Landlords.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As I have found that parties not related to the Landlords were occupying the rental unit on November 27, 2015, I find that the Landlords must pay the Tenant \$1,800.00, which is the equivalent of double the monthly rent.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant experiences a loss that results from a landlord not complying with the *Act*, the regulations or a tenancy agreement.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the Tenant submitted insufficient evidence to establish that the Landlords failed to comply with section 32(1) of the *Act* when they failed to install a bathroom fan in the bathroom of this rental unit. In reaching this conclusion I was influenced by the Tenant's testimony that the unit was old and by the absence of evidence to show that building codes require a bathroom in a residence of this vintage to be equipped with a bathroom fan. While I accept that the Tenant had to periodically clean the bathroom to prevent/eliminate the accumulation of mould, I find that is to be expected when a bathroom is not equipped with a fan. As the Tenant has failed to establish that the Landlords failed to comply with section 32(1) of the *Act* when they did not provide her with a bathroom fan, I find that she is not entitled to compensation because she had to periodically clean mould in her bathroom.

On the basis of the undisputed evidence I find that when this tenancy began the Landlords promised to replace damaged window screens and a broken window pane. I find that this verbal agreement was a term of the tenancy agreement and that the Landlords failed to comply with that agreement.

I find that the Tenant has submitted insufficient evidence to establish that the cracked window pane and the damaged screens significantly reduced the value of this tenancy and I therefore dismiss her claim for compensation for these deficiencies. In reaching this conclusion I was heavily influenced by the absence of photographs or similar independent evidence which would allow me to make an independent assessment of the significance of the deficiency. I find it highly unlikely that the Tenant was unable to use the den for her baby simply because there was a cracked window and/or holes in the window screen, as those deficiencies are typically minor inconveniences.

Section 27(2)(b) of the *Act* allows a landlord to terminate or restrict a non-essential service or facility that is not a material term of the tenancy agreement providing the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. Appliances are included in the definition of a "service and facility" in the *Act*.

On the basis of the undisputed evidence I find that a washing machine and clothes dryer were provided with the rental unit and that approximately six months after this tenancy began both appliances stopped functioning properly. I find that this constitutes a restriction in this service/facility. I find that the need to hold the dial of the washing machine until the machine filled with water is a minor inconvenience. I find that the need to manually shut off the clothes dryer was a slightly greater inconvenience, as it would not be reasonable to leave the unit for any extended period of time while the clothes were drying.

As the Tenants ability to use her washing machine/clothes dryer was restricted during this tenancy, I find that she is entitled to compensation of \$100.00. In determining that she is not entitled to compensation of more than \$100.00 I was heavily influenced by the fact she had the ability to use the appliances, albeit with some inconvenience.

On the basis of the undisputed evidence I find that some electrical outlets in this rental unit did not function properly. In the absence of evidence to show that the Tenant was informed some of the electrical outlets did not work properly when this tenancy began, I find that the malfunctioning outlets constitute a restriction in a service and facility. I find that the need to use an extension cord to vacuum is a minor inconvenience, for which she is entitled to compensation of \$25.00.

In determining that the Tenant is not entitled to compensation of more than \$125.00 for the deficiencies with the appliances and the electrical outlets, I was guided by section 7(1) of the *Act*, which requires tenants who claim compensation for damage or loss to do whatever is reasonable to minimize the damage or loss. In these circumstances I find that the Tenant should have filed an Application for Dispute Resolution seeking an

Order requiring the Landlords to repair the appliances/outlets, in which case they could have been repaired long before the end of the tenancy.

On the basis of the undisputed evidence I find that a fence on the residential property was in a state of disrepair. I find that the Tenant has submitted insufficient evidence to establish that the condition of the fence significantly reduced the value of this tenancy and I therefore dismiss her claim for compensation for the condition of the fence. In the absence of photographs or similar independent evidence which allows me to assess the condition of the fence, I find that the Tenant has failed to establish that the fence was unsafe.

With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow me to grant compensation to either party for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim to recover mailing costs, as I do not have authority to award compensation for such costs.

I find that this Application for Dispute Resolution has merit and that she is entitled to recover the fee for filing this Application for Dispute Resolution.

I dismiss the Tenant's application to recover the fee for a previous Application for Dispute Resolution that she filed, as that is a matter that should have been decided by the Arbitrator who adjudicated those proceedings.

Conclusion

The Tenant has established a monetary claim of \$1,975.00, which includes \$1,800.00 compensation pursuant to section 51(2)(a) of the *Act*, \$100.00 for the deficiency with the washing machine/clothes dryer, \$25.00 for the deficiency with the electrical outlets, and \$50.00 in compensation for the cost of filing this Application.

I grant the Tenant a monetary Order in the amount of \$1,975.00. In the event that the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of the Court.

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 18, 2016

Residential Tenancy Branch

