



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on May 16, 2016. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this tenancy started on November 01, 2015 for a fixed term which was not due to end until October 31, 2016. Rent for this lower unit in the landlord's home was

\$1,200.00 per month due on the 1st of each month. The tenant paid a security deposit of \$800.00 which has been returned to the tenant.

The tenant testified that during the month of April, 2016 the tenant suffered a loss of quite enjoyment of her rental unit. The landlord would not make repairs to things brought to his attention by the tenant, the landlord sold the house and kept harassing the tenant to move out to the extent that the tenant felt threatened and had to call the police. Another time the tenant arrived home and found the police at the landlord's home looking for the landlord. The tenant testified that the landlord continued to send text messages to the tenant harassing her to move out even after the tenant explained to the landlord that she had a fixed term tenancy.

The tenant testified that the landlord's realtor also harassed the tenant by continually telling her she had to move out because the house was sold. The tenant referred to some text messages sent between the tenant and landlord and referred to a text message in which the landlord says "karma is after the tenant". At first the landlord would agree to pay the tenant some money to move out to compensate her and then the next day he would change his mind. The tenant testified she found the landlord's behaviour threatening, especially after a police officer informed the tenant that the landlord was an alcoholic and was in trouble with the police.

The tenant testified that on one occasion the landlord sent a text to the tenant asking if he could store some chicken in her freezer. The tenant agreed to this; however, the landlord entered the tenant's unit and put this chicken in her freezer without notice of entry or the tenant's permission to enter. On another occasion the landlord or his worker entered the tenant's unit without notice or permission. The landlord denied this entry but the tenant had placed flowers behind the door and these were caught in the door when she returned home showing someone had entered her unit.

The tenant testified that she was harassed by the landlord into looking at other places to rent. The landlord's realtor was calling the tenant twice a day to move out as the landlord had told him the tenant was on a month to month tenancy. The tenant testified that she had agreed to end the tenancy with a mutual agreement if the landlord paid her out a sum of money but the landlord kept changing his mind about that. The tenant testified that the landlord did not inform the new owners of the house that the tenant was on a fixed term tenancy and the new owners

also wanted the tenant to move out. The landlord had told the tenant that if he sold the house the tenant could continue to rent from any new owner; however, the landlord just kept trying to force the tenant to leave. Due to the tenant's loss of quiet enjoyment of her rental unit throughout April the tenant seeks to recover compensation of \$1,200.00.

The tenant testified that cable and internet were included in her rent and this was shown on the advert for the rental unit. Text messages between the parties also show that the landlord was aware of this but he did not provide this service and kept making excuses not to provide it. The tenant offered to install her own service and asked the landlord to deduct it from her rent or to pay for it. The tenant had everything hooked up with Shaw for free but as the landlord did not want the tenant to deduct anything from her rent he then got Telus in to fit an extender in the attic. The tenant testified that from November to the end of February she did not have this service and therefore seeks to recover \$150.00 per month to a total of \$600.00 in compensation.

The tenant testified that there was only one smoke detector in her unit above the stove and this one did not work until the landlord brought the tenant a new battery. The tenant testified that this compromised her safety in the unit and she seeks to recover \$300.00 for the period between November and February without a working smoke alarm.

The tenant testified that when she moved into the unit the landlord told her there was an oven and stove top. The oven did not work at all and none of the burners on the stove top worked. The landlord was informed and said he would remove them and replace them. The landlord did remove the oven but did not replace it and the tenant had to purchase a toaster oven. The landlord only provided a two plate hotplate for the tenant's use. The tenant seeks to recover \$600.00 for not having a working oven for six months and a further \$600.00 for not having a working stove top.

The tenant testified that there was a washer in the unit but it did not work correctly. Every time the tenant put a load in it would shake so badly the tenant had to put cushions around it to stop it damaging the wall. The tenant had to start putting small loads in and this meant she had to do extra laundry just to stop the machine shaking. Further to this the tenant was unable to use the washer and dryer at the same time as it blew the breakers. The unit was not wired correctly for

a kitchen space or for the washer/dryer. The tenant seeks to recover \$600.00 from the landlord for compensation for the faulty washer and the extra work doing laundry.

The tenant testified that in addition to the washer and dryer blowing the breakers the tenant could not plug two things into outlets such as a kettle and toaster as it blew the breakers. The tenant was then forced to move a heavy dresser to get to the breaker panel to restore power. The tenant informed the landlord who later sent a friend round to look at the problem. This friend said that the dryer should be on its own breaker and it could start a fire and also said that the wiring was not adequate for the usage. His solution was to plug things in separate areas of the unit and told the tenant that the place had only been wired for a bar and not a kitchen. This again was a safety issue. The tenant contacted the bylaw office and was told that this was an illegal suite and a fire hazard. Due to this the tenant seeks compensation of 150.00 per month for six months to a total of \$900.00.

The tenant testified that her rental unit was not secure. The door between her unit and the landlord's unit only had a lock on the landlord's side. The tenant felt this was a security risk for her and she asked the landlord to fit a lock on her side of the door but he did not comply. The tenant therefore seeks compensation of \$50.00 a month for six months to a total of \$300.00.

The tenant testified that her external door to her unit was broken. It would not stay closed unless the tenant engaged the deadbolt and there were large gaps you could put your fingers in. This let cold air into the unit. The tenant informed the landlord and his solution was to tape the door up. This was not a good fix as the tenant used this door to enter the unit. The tenant seeks compensation for this of \$50.00 a month for six months to a total of \$300.00.

The tenant testified that there were no lights down the pathway to her unit. The tenant had to walk down stone steps in the dark and this was a safety issue for the tenant. The tenant complained to the landlord but the landlord did not do anything to make this area safe. The tenant seeks compensation of \$60.00 a month for six months as her safety was compromised to a total of \$360.00.

The tenant testified that when she signed the lease she was told she could have space in the garage for her car; however, the landlord had two cars parked in the garage and a lot of other

stuff which prevented the tenant from parking her car. The tenant seeks to recover compensation for the loss of this parking space of \$25.00 a month for six months to a total of \$150.00.

The tenant testified that as the landlord forced the tenant to vacate the rental unit by his harassment in asking her to leave; he should be responsible to pay out the lease term until the end of October, 2016. The tenant was forced to vacate on June 15, 2016 and the new owners had to stay in a hotel because they did not know the house had a tenant living in it. The new owners would not make any repairs and just wanted the tenant out. The tenant seeks to recover \$6,000.00 in compensation for not being able to stay in the unit until the lease expired.

The tenant testified that she moved to BC from Saskatchewan because she thought she would have somewhere to live for a full year and then the option to go month to month. The landlord was aware of this but did not inform the tenant he wanted to sell the house. The tenant spent \$2,211.56 moving from Saskatchewan and seeks to recover this from the landlord.

The tenant testified that as she could not find alternative rental accommodation she had to return to Saskatchewan. The tenant had originally claimed \$2,211.56 for her move back but testified that she rented a U-Haul truck instead, she had to fly her mother's boyfriend to BC to drive the truck back, she had to rent two hotel rooms and she had to spend gas driving her own car back. The tenant seeks to recover \$745.00 for the U-Haul truck; \$300.00 for flights; \$600.00 for fuel for the U-Haul truck; \$250.00 for fuel for her car; and \$320.00 for two hotel rooms to a total amount of \$2,215.00.

The tenant testified that she had planted a garden at the unit before the landlord informed her he had sold the house. The tenant seeks to recover \$600.00 spent on the garden.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's undisputed evidence before me.

With regard to the tenant's claim for a loss of quite enjoyment of her rental unit; I refer the parties to s. 28 of the *Act* which states:

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.*

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference.

In determining the amount by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation or the degree to which the tenant was unable to use or was been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I am satisfied from the tenant's undisputed evidence that the landlord started a fixed term tenancy with the tenant for a year but sold the house during the fixed term period. It is clear that the landlord did not respect the fixed term agreement and it is likely he did not inform his realtor that this was a fixed term tenancy that could not legally be ended until October 31, 2016.

While I accept that the tenant felt harassed or even threatened to give up the rental unit during April, 2016 I find that the seriousness of the situation could have been minimized had the tenant filed an application against the landlord to seek an Order for the landlord to comply with the *Act*, regulations or tenancy agreement regarding her fixed term tenancy. Therefore, in making a determination as to the amount by which the value of the tenancy was reduced I find the tenant did suffer some loss of quiet enjoyment by the landlord selling the home and giving the tenant

email notice that she must vacate at the end of June and by continually contacting her asking her to find somewhere else to live. I am also satisfied that the landlord or a person hired by the landlord entered the tenant's unit on at least two occasions without written notice or the tenant's express permission. However, I find the tenant's claim to recover an amount equivalent to a full month's rent is excessive. I therefore limit the tenant's application for compensation for a loss of quite enjoyment to **\$400.00**.

With regard to the tenant's application for a loss of service for the cable and internet; I am satisfied from the evidence presented that this service was included in the rent as stated in the advertisement for the property and by text correspondence between the parties. I am satisfied that the landlord kept agreeing to provide the tenant with this service but failed to do so until February, 2016. The tenant submitted that this service has a value of \$150.00 a month; however, has insufficient evidence to support this amount. As there was clearly a lack of cable and internet from November to the end of February then I find the tenant is entitled to recover a reduced amount of \$100.00 per month to a total of **\$400.00**.

With regard to the reminder of the tenant's claim for safety issues due to the lack of working smoke detectors, problems with the wiring for the outlets causing breakers to blow; the lack of a lock on the interior door between the units; and for issues with the stove top, oven, washer, the exterior door, the exterior lights and the lack of parking space in the garage; I find the tenant has a duty to mitigate or minimize the loss pursuant to s.(7)(2) of the Act. I accept the tenant asked the landlord to make these repairs to ensure the safety of the tenant and the unit and the landlord failed to do so for the period of the tenancy. What the tenants recourse should have been was to file an application against the landlord for repairs to be made to the unit or for emergency repairs to be made for health or safety reasons. The tenant did not file her application until May 2016 at which time she has merely sought a Monetary Order for the lack of repairs. Consequently, as these issues could have been resolved at a hearing earlier had the tenant filed an application for repairs then I am not prepared to issue a Monetary Order to the tenant at this time. These sections of her claim are therefore dismissed.

With regard to the tenant's application seeking a lease payout of \$6,000.00; when a fixed term tenancy has been established then neither party can end that tenancy simply because the landlord has sold the house. A landlord may not end the tenancy until the end of the fixed term

and must then give the tenant Two Months' Notice that he has sold the house only if the following conditions exist

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant testified that she felt forced out of the unit by the landlord, the landlords realtor and the new owners; however, as the tenant is protected under the *Act* from having to vacate before the end of the fixed term or before a Two Month Notice has been issued at the end of the fixed term then if the tenant does vacate then it is deemed to be her own choice and there is no provision under the *Act* for me to award the tenant any rent she would have paid in compensation. This section of the tenant's application is therefore dismissed.

With regard to the tenant's application to recover moving costs for moving to BC and for moving back to Saskatchewan. As I have deemed that the tenant vacated the unit before she legally had to move out then I am unable to allow her to recover her moving costs. As the tenant did vacate the unit and could not find anywhere else to rent locally then this is not the responsibility of the landlord. As such the tenant's application to recover compensation for moving costs is dismissed.

With regard to the tenant's application to recover \$600.00 spent making a garden at the unit. I find the tenant has insufficient evidence to show she planted a garden prior to the landlord informing her that he was selling the house. This is always a risk for tenants when they spend

money in a rental property to enhance the property for their own use. The tenant has insufficient evidence to show how much she spent planting a garden or her time and labour in doing so. Without verification of the actual amount spent or that this garden was planted after the landlord knew he was selling and prior to informing the tenant then I must deny the tenant's application to recover \$600.00 from the landlord. This section of the tenant's claim is therefore dismissed.

The tenant has been issued with a Monetary Order for the following amount pursuant to s. 67 of the *Act*:

Loss of quite enjoyment	\$400.00
Loss of cable and internet	\$400.00
Total amount due to the tenant	\$800.00

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$800.00**. The Order must be served on the landlord. Should the landlord 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.

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: November 16, 2016

Residential Tenancy Branch