



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GMZ HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, RR, MNDC, FF

Introduction

On November 1, 2016, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), Regulation, or tenancy agreement. The Tenant is also requesting that the Landlord comply with the Act, Regulation, or tenancy agreement; for the Landlord to provide services or facilities required by law; and for authorization to reduce rent for repairs, services of facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

The Tenant’s application indicates he is seeking compensation in the amount of \$2,600.00; however, the monetary order worksheet he provided indicates he is claiming a higher amount. The Tenant testified that he adjusted his claim amount because he realized the Landlord had been in his apartment.

The Tenant did not amend his application according to the requirements of the Residential Tenancy Branch Rules of Procedure. The Tenants claim is limited to the issues and monetary claim amount that is on the Application.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss?

- Is the Tenant entitled to a rent reduction?
- Is the Landlord required to provide services or facilities required by law?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 1, 2015, as a one year fixed term tenancy to continue thereafter as a month to month tenancy. Rent in the amount of \$980.00 is due on the first day of each month. A security deposit of \$472.50 was paid by the Tenant to the Landlord. Both parties provided a copy of the tenancy agreement.

The Tenant is seeking compensation for cleaning a dirty suite and due to issues surrounding heat in the rental unit. The Tenants claims are as follows:

Cleaning Services	\$450.00
BC Hydro	\$200.00
Space Heater Purchase	\$449.11
Mailing and photocopy costs	\$50.00
Corporate Summary	\$21.00
Compensation for discomfort	\$1,000.00
Compensation for anger	\$1,000.00

Cleaning Services \$450.00

The Tenant testified that at the start of the tenancy he spent 20 hours cleaning the rental unit because the apartment was completely filthy.

The Tenant testified that he discussed the issue with the Landlord who replied that everybody has different levels of cleanliness. The Tenant did not put his concerns into writing. The Tenant did not reach an agreement with the Landlord for compensation for cleaning the rental unit. The Tenant submitted that the Condition Inspection Report shows that areas of the rental unit were dirty.

In response, the Landlord testified that there was no prior agreement to compensate the Tenant for cleaning the rental unit. He submitted that the Tenant arbitrarily, without notice, initiated his own cleaning. The Landlord testified that no opportunity was given to the Landlord to arrange for cleaning or to get an estimate for cleaning. The Landlord submitted that the Tenant has not provided a receipt for cleaning.

BC Hydro \$200.00

The Tenant testified that his hydro costs should be \$25.00 per month which is what the Tenant believes is the normal cost for a 1-bedroom apartment. The Tenant testified that the heat was

shut off and there were problems with getting heat to the rental unit. The Tenant testified that the Landlord turned the heat off on May 1, 2016, and did not turn it back on until the beginning of November 2016. The Tenant testified that the Landlord told him to purchase a space heater. The Tenant provided copies of his hydro bills and is seeking compensation of \$200.00 for hydro costs that exceeded \$25.00 per month. The Tenant testified that he pays hydro for lights, stove, fridge, and the heater.

In response, the Landlord testified that the Tenants submission that hydro should cost \$25.00 per month is inaccurate and low. The Landlord testified that the amount of hydro used by the Tenant in the winter months does not support the Tenant's claim. The Landlord submitted that the Tenant uses a personal air conditioner in the summer and the summer months show almost double the amount of hydro consumption. The Landlord testified that the hydro cost for a bachelor suite in the building for February to April was \$50.25 and the Tenant's cost was lower at \$48.87.

The Landlord testified that he arranged for temperature readings to be taken in the third floor hallway of the rental unit from March to June. The Landlord testified that the temperature readings averaged between 21 degrees and 22 degrees. The Landlord sent the Tenant a notice of entry letter dated March 31, 2016, stating the Landlord will be entering the unit to take a temperature reading. The Landlord testified that the Tenant refused to allow the Landlord to enter. The Landlord followed up by sending the Tenant a letter dated April 6, 2016, explaining section 29 of the Act with respect to a Landlord's right to enter.

The Landlord testified that the hallway is a degree or two warmer than a rental unit because of heating pipes.

The Landlord provided letters from three occupants in the rental property dated in November 2016, which state there is heat in the building and heat in their rental units and that the heating is comfortable and consistent.

Space Heater \$ 449.11

The Tenant testified that he purchased a space heater after the Landlord told him the heat would be off. The Tenant provided a copy of the receipt.

In response, the Landlord testified that he never told the Tenant that the heat would be turned off, but rather the boiler is controlled by the outside temperature. The Landlord testified that the boiler is never turned off. The Landlord testified that when the temperature outside drops to 59 degrees or lower, the boiler kicks in. The Landlord testified that 59 degrees is approximately 20 degrees Celsius.

The Landlord testified that he never told the Tenant to purchase a space heater.

The Landlord testified that there was an electrical problem that affected a rental unit two floors below the Tenant, but the problem never restricted the Tenant's heat.

The Landlord testified that the Tenant requires more heat than the average person.

Mailing and Photocopy Costs \$50.00

The Tenant is seeking to recover costs for preparing and serving documents for this hearing.

The Tenant's claims for these items are dismissed, as they are not compensable under the Act.

Corporate Summary \$21.00

The Tenant testified that he attended a corporate registry and paid for a search to determine whether the Landlord was the owner or the manager of the rental unit.

The Tenant's claim for the corporate registry search is dismissed. The corporate registry search was not required for the Tenant to make application for Dispute Resolution. The Tenant chose to conduct the search and the cost for the search is borne by the Tenant.

Compensation for discomfort \$1,000.00

The Tenant clarified that this claim is for loss of heat and other concerns. The Tenant testified that it has been uncomfortable dealing with a dirty suite, and there have been noisy neighbours. The Tenant testified that he complained to the Landlord about the noise. The Tenant testified that the Landlord does not clear snow, and he is worried about getting to his car in the parking lot.

In response, the Landlord testified that he takes noise complaints seriously. The Landlord acknowledged receiving a complaint from the Tenant and submitted that he spoke to the occupant involved. The Landlord testified that the Tenant confronted the occupant. The Landlord provided a copy of the written complaint about the Tenant from the occupant.

The Landlord testified that he only received one written complaint from the Tenant regarding noise, but the Tenant did not know where the noise was coming from.

The Landlord testified that the parking lot of the rental property was plowed and salted.

Compensation for anger \$1,000.00

The Tenant testified that he is angry that he has to look for another place to live. He submitted that he is dealing with rehabilitation for his surgery. The Tenant stated that his claim is a punitive claim.

In response, the Landlord testified that the Tenants claim is punitive. The Landlord submitted that the Tenant has failed to minimize any loss. He submitted that the Tenant:

- did not seek an agreement before cleaning;
- did not mention buying a heater;
- would not let the Landlord into his suite.

The Landlord feels the Tenant's claim is frivolous.

The Tenant responded by saying that the Landlord's notice of entry was not specific enough.

Analysis

Residential Tenancy Guideline #16 Claims in Damages states

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement*
- *Loss or damage has resulted from this non-compliance*
- *The party who suffered the damage or loss can prove the amount of or value of the damage or loss*
- *The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Section 7 of the Act states, if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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

Cleaning Services \$450.00

Despite the Condition Inspection Report indicating that there were some areas in the rental unit that needed cleaning, I find that there was no agreement between the parties that the Landlord would compensate the Tenant for cleaning. The Tenant did not put his concerns into writing to the Landlord, and did not seek to resolve the issue through Dispute Resolution until 11 months after the fact.

There is insufficient evidence regarding the amount of cleaning that was required, and I find that the Landlord was not given an opportunity to clean it or arrange for cleaners.

I find that there was no agreement for the Landlord to pay the Tenant for cleaning and therefore, the Tenant's claim for \$450.00 is dismissed.

Space Heater \$449.11

The parties provided opposing testimony on this claim. When parties provide different but equally believable testimony, the burden of proof rests with the Applicant. The Tenant has not provided sufficient evidence to support his claim that the Landlord told him to purchase a space heater and that he would be reimbursed.

The Tenant's claim for \$449.11 is dismissed.

BC Hydro \$200.00

Section 27 states a Landlord must not terminate or restrict a service or facility if the service or facility is essential to the Tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

The Landlord provided the stronger evidence and testimony regarding the service of heat. The Landlord provided testimony that the boiler is never turned off and is set to provide heat. The Landlord provided heat readings and provided letters about the heat from other occupants. The Landlord testified that the Tenant would not allow him into the rental unit to conduct a heat reading. I find the Landlord's notice of entry for April 1, 2016 complies with the requirement of section 29 of the Act. Upon review of the tenancy agreement, I find there is nothing that indicates the level or amount of heating to be provided. The Tenant has provided no evidence of health, safety and housing standards required by law in regard to the provision of heat. I find that the Landlord is providing heat to the building and to the Tenant's rental unit. I do not find that the Landlord is restricting heat.

I find that the Tenant has not provided sufficient evidence to prove that the Landlord is restricting heat, and that as a result the Tenant suffered a loss of \$200.00.

The Tenants claim for \$200.00 is dismissed.

Compensation for discomfort \$1,000.00

The Tenant's claim for \$1,000.00 is dismissed. The Landlord provided the stronger evidence and testimony regarding the service of heat. I find that the Landlord is providing heat to the building and to the Tenant's rental unit. I do not find that the Landlord is restricting heat.

I find that the Tenant provided insufficient evidence that the Landlord failed to take reasonable steps to correct situations where the Tenant reported a breach of his quiet enjoyment. The Landlord spoke to the occupant involved.

I find that the Tenant has not provided sufficient evidence to prove that he has suffered a loss of quiet enjoyment due to noise on a frequent and ongoing basis. The Tenant's claim is dismissed.

Compensation for anger \$1,000.00

The Tenant is seeking punitive damages due to the Landlord contravening sections of the Act.

I find that the Landlord has not contravened the Act. I find that the Tenant has not established a loss of a service or loss of quiet enjoyment.

The Tenants claim for \$1,000.00 is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was not successful with his application, I decline an order to recover the cost of the filing fee.

Conclusion

The Tenant's Application 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: January 30, 2017

Residential Tenancy Branch

