Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LARYLYN PROPERTY MANAGEMENT B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing convened as a result of a Tenants' application for Dispute Resolution filed August 22, 2016 wherein the Tenants sought a Monetary Order in the amount of $5,000.00 including return of double their security deposit, money owed or compensation for damage or loss under the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* or the tenancy agreement, in addition to recovery of the filing fee and other unspecified relief.

Only the Tenant, C.R. appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present the Tenants' evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on August 26, 2016 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Tenant advised that the registered mail package was picked up by the Landlord on August 30, 2016. Additionally, and pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Landlord was duly served and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord in the amount of $5,000.00?

2. Should the Tenants recover the filing fee paid?

Background and Evidence

This fixed term tenancy began July 1, 2015. The Tenant testified that they paid a security deposit and pet damage deposit in the total amount of $1,700.00.

Introduced in evidence was a letter from the Tenants dated May 28, 2016 wherein the Tenants gave their written notice to end their tenancy as of June 30, 2016. On this letter the Tenants also provided the Landlord with their forwarding address.

The Tenant testified that the Landlord did not perform a move in or move out condition inspection.

In written submissions dated August 22, 2016 the Tenants write that they seek:

$5,000.00 including:

- $1,000.00 representing $100.00 per week for the period of 10 weeks the Tenants claim they were forced to climb the stairs to the 3rd floor without an elevator;

- return of double their security deposit in the amount of $3,400.00; and,

- recovery of part of their moving cost for a broken dining room table in the amount of $600.00.

The Tenant testified that the elevator was out of service from April 23, 2016 and continued to be out of service until the tenancy ended at the end of June 2016. The Tenants sought compensation in the amount of $100.00 per week for these ten weeks for a total of $1,000.00. She estimated that as a result of the inoperable elevator, she and her roommate had to climb the stairs five to six times per day. The Tenant testified that she is 75 years old and the Tenant R.T. is 69 years old. The Tenant further testified that the Tenant, R.T., was an athlete but suffers from ankle problems as a result of a broken bone that never healed properly and as a result climbing the stairs is

very painful for her. The Tenant testified that the lack of elevator was the defining problem and the primary reason why they ended the tenancy.

The Tenant testified that because the staircase was very narrow, and the elevator was not working, some of their items had to be lowered through the rental unit window when they moved out. In particularly she stated that their dining room was lowered through the window and that the table leg broke during the move. She stated that the table could not be repaired and the amount to replace the dining room table was approximately $558.00.

The Tenant further testified that when the Landlord received the May 2016 decision the property manager, D.N., called, and was very angry and said that the Landlord wanted the Tenants out of the rental unit as soon as possible.

In the Tenants' August 22, 2016 written submissions the Tenants also write: "should we receive compensation for points 1-2-3-4-5-6 that were never fixed as per the decision [rendered May 13, 2016]." At the hearing the Tenant confirmed they did not seek compensation for these amounts, only to confirm that the work was not done as ordered; in particular, the Tenant stated that the Landlord failed to comply with the following Orders in the May 2016 Decision:

> "By no later than May 31, 2016, the Landlord shall:
>
> 1. Have the resident "handyman" assess whether weather stripping or some other material may be used to reduce the gap in the Tenant's front door.
>
> 2. Have a plumber inspect the sinks in the rental unit to address the debris issues reported by the Tenant.
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> 3. Have the bathroom fan inspected to ascertain the source of the debris which is thrown when the fan is in use.
>
> 4. Have the dishwasher in the rental unit repairs to ensure the Tenant can use more energy efficient cycles.
>
> 5. Repair the front door lights and ensure adequate power to the lights for safety reasons.
>
> 6. Repair the lock on the front door and install a FOB for safety reasons.

The Tenants also seek recovery of the $100.00 filing fee paid for their Application.

Analysis

I will first deal with the Tenants' claim for return of double their security deposit.

Section 38 of the *Residential Tenancy Act* provides as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
>
> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
>
> (a) the director has previously ordered the tenant to pay to the landlord, and
>
> (b) at the end of the tenancy remains unpaid.
>
> (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, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
>
> (6) If a landlord does not comply with subsection (1), the landlord

> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlord. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The Landlord may only keep all, or a portion, of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **$3,400.00**, comprised of double the pet damage ($1,700.00) and security deposit ($1,700.00).

I will now consider the Tenants' claim for compensation for loss of use of the elevator.

Provided in evidence were notices issued by the Landlord dated March 2, 2016, April 14, 2016 and April 21, 2016, confirming there would be no access to the elevator while

the elevator modernization was being completed and that the work was expected to be completed in six to eight weeks. A further notice issued May 26 2016 informed the residents that due to an unforeseen delay the expected completion date was the end of July 2016.

I accept the Tenants undisputed evidence that the elevator was inoperable for the last 10 weeks of their tenancy.

The subject rental unit is on the third floor of the rental building. The Tenant testified that she is 75 years old and R.T. is 69 years old; additionally, she confirmed that R.T. suffers from mobility issues as a result of a previous injury. C.R. testified that she and R.T. were forced to climb three flights of stairs five to six times a day. I accept the Tenants' evidence that the lack of use of an elevator was the primary reason for ending their tenancy. Clearly the loss of use of this service was of particular concern to these Tenants.

I find the Tenants are entitled to compensation for the loss of use of the elevator pursuant to section 27 of the *Residential Tenancy Act* which provides as follows:

> **Terminating or restricting services or facilities**
>
> **27** (1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.
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> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
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> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
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> (b) 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.

I award the Tenants the **$1,000.00** claimed representing $100.00 per week the elevator was inoperable.

I further accept the Tenants' evidence that as a result of the inoperable elevator they were forced to move some of their personal items out of the rental unit through the window when they moved out. While moving costs are normally not recoverable by tenants, I find these Tenants are entitled to the **$600.00** claimed for the cost to replace

the dining room table which was damaged during the move and as a direct result of the inoperable elevator.

The Tenants, having been substantially successful, are also entitled to recover the **$100.00** filing fee.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **$5,100.00** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced 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: February 23, 2017

Residential Tenancy Branch