



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF, MNDC, OLC, ERP, RP, PSF, RR, FF, O

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

Landlord TK and the corporate landlord named both tenants as respondents in their application for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant LA named Landlord SSR as the sole respondent in her application for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At the outset of the hearing the tenant testified that the other individual identified in the landlord's application as a respondent was never a tenant under the tenancy agreement and should not be a party to this hearing. The tenant, LA confirmed she is the only

tenant under the tenancy agreement (the “tenant”). The landlord’s agent, SA primarily spoke for both the individual landlords and the corporate landlord (the “landlord”).

Initially, I was scheduled to hear only the tenant’s application today. The landlords’ application was originally scheduled to be heard by me on April 19, 2017. The landlord requested that I bring the matters together so that both could be heard at once. The tenant testified that she had not received the landlords’ application for dispute resolution. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

Preliminary Issue – Service

As both parties were in attendance I attempted to confirm service of the respective applications and materials. The landlord confirmed receipt of the tenant’s application for dispute resolution and her evidentiary materials. In accordance with sections 88 and 89 of the Act, I find that the landlord was served with copies of the tenant’s application and evidence.

The landlord testified that a 1 Month Notice to End Tenancy for Cause dated February 17, 2017 (the “1 Month Notice”) was served on the tenant by registered mail on that same date. The landlord provided a Canada Post tracking number as evidence of service. The landlord testified that the landlords’ application for dispute resolution dated March 15, 2017 (the “landlords’ application”) was served on both named respondents by registered mail on that same date. The landlord provided two Canada Post tracking numbers as evidence of service.

The tenant testified that she did not receive either the 1 Month Notice or the landlords’ application. The tenant said that mail has been repeatedly stolen from the rental unit mailbox. The mail box is an unsecured standalone type facing the street. The tenant testified that she saw a Canada Post Notice of Delivery addressed to the other respondent in the mailbox but has no recollection of a Notice of Delivery addressed to herself. The tenant said that the landlords ought to have known that mail service was unreliable and that another method of service should have been used.

Both section 88 and 89 of the *Act* provides that documents must be served on a party in one of a number of ways including by sending a copy by registered mail to the tenant’s address. I find that the landlords were at liberty to choose to serve documents by registered mail. I find that the landlords have served the 1 Month Notice and the

landlords' application in a manner that is consistent with the Act. Therefore, I find that pursuant to sections 88 and 90 of the Act, the 1 Month Notice was deemed served on February 22, 2017, five days after its mailing and the landlords' application was deemed served on March 20, 2017, five days after its mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Is the tenant entitled to a monetary award for damage and loss?

Should the landlords be ordered to comply with the Act, regulation or tenancy agreement?

Should the landlords be ordered to make repairs to the rental unit?

Should the landlords be ordered to provide services or facilities required by law?

Are either party entitled to recovery of their filing fees from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence, digital evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below

The parties agreed on the following facts. This tenancy began in November, 2016. The monthly rent is \$1,600.00 payable on the first. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy and is still held by the landlords. The rental unit is the main floor of a detached residence.

The tenant characterizes the tenancy as prison-like. She testified that she was promised a quiet rental unit and the landlord has failed to provide it. She complains that she has had numerous altercations and disputes with the downstairs neighbor. She testified that the downstairs neighbor has turned off the power to her unit, keeps loud dogs, and has carried on in a loud and disruptive manner. The tenant said that the rental unit's temperature is unbearable as the heat from the downstairs neighbor rises into her unit. Additionally, the tenant complained about mail being stolen from her mailbox, the municipality advising her of outstanding building permits and the general negative impact the tenancy has had on her health.

Analysis-Tenancy

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I have found that the tenants are deemed to have been served with the 1 Month Notice on February 22, 2017. I find that the tenants have failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, March 31, 2017.

I find that the landlords' 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice.

Therefore, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act* for March 31, 2017 the effective date of the 1 Month Notice.

Analysis – Monetary Claim

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant makes an application for \$19,639.75 of loss and damages as a result of the landlords' actions or negligence. She claims the following amounts in her Monetary Order Worksheet:

Item	Amount
Moving Expenses	\$1,695.75
Security Deposit	\$800.00
Rent Paid (Nov 15, 2016 – Feb, 2017)	\$7,200.00
General Damages	\$10,000.00
Loss of Subletting Income	\$1,800.00
Hydro Electrical Bills	\$251.16
Filing Fee	\$100.00
Canada Post Registered Mail	\$10.71
USB for Evidentiary Materials	\$52.49

Total:	\$21,683.95
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I note that the amount claimed in the tenant's Monetary Order Worksheet differs from that claimed in her application for dispute resolution. I will deal with each of the heads of damages in turn.

1) Moving Expenses, Security Deposit and Rent Paid

The tenant claims the full amount of her moving costs, security deposit and rent paid during this tenancy. It is clear the tenant is seeking to be returned to the position she would have been in had she not entered into the tenancy agreement and moved into the rental unit. I find that there is little evidentiary foundation for this claim. The tenant has provided general complaints about the tenancy, and the disputes she has had with the other tenants. While the tenant is unhappy with the tenancy I find that she has not provided sufficient evidence that justifies a monetary award. Her written evidence is primarily a subjective account of her complaints. The digital evidence also provides little basis to justify any claim under this head. The tenant had use of the rental unit and resided there for several months. I find that there is insufficient evidence that entitles the tenant to a full refund of rent for this tenancy. I dismiss the claim made under these headings.

2) General Damages

The tenant makes a claim for a monetary award of \$10,000.00 for loss of quiet enjoyment pursuant to section 28 of the *Act*, and loss in the value of the tenancy pursuant to sections 65 and 67 of the *Act*.

The tenant testified that this tenancy has been unpleasant and filled with issues. She mentioned ongoing disputes with the other tenant, issues with electricity, and the temperature inside the rental unit. The tenant also complains about sound between the rental units and from the neighbor's dogs. In addition the tenant characterized the landlords as untrustworthy and unwilling to perform the duties of a landlord. The tenant asserted that the landlord was complicit in a campaign of harassment and interference.

I find that there is little evidentiary basis for any damage claim, much less in the amount that the tenant feels is appropriate. The tenant's evidence consists of subjective complaints. The tenant has not provided sufficient evidence to support her general assertions. While it is clear that the tenant is unhappy and believes that there are deficiencies in the rental unit she has failed to provide sufficient evidence of her claims.

While I find that the tenant has not been able to enjoy the rental unit, I find there is insufficient evidence to conclude that the tenant's dissatisfaction has been caused by the landlords. Therefore, I am dismissing the tenant's claim made under this heading.

3) Loss of Subletting Income

The tenant claims damages, alleging that she was unable to have a student boarder move into supplement her rent. She gave evidence that she is losing \$600.00 on a monthly basis because of her inability to find a boarder. She claims for damages stating she has been forced to pay the full monthly rent herself.

I find that there is little evidence that the tenant's failure to find someone to share the rental unit is a result of the landlords' actions. The tenant claims that she chose not to have a student boarder because of the condition of the rental unit. I find that the decision not to find a boarder was entirely the tenant's. In any event, I find there is no contractual obligation on the landlord to assist or facilitate the tenant in finding someone to share the rent. I dismiss this portion of the tenant's claim.

4) Hydro Bill

The tenant claims the amount of \$251.60 for electrical bills. I find the tenant has provided insufficient evidence for this claim. The tenant references utility bills in her written statement but has provided no copies of the bills in question. The tenant has not shown how she arrived at the amount claimed nor provided sufficient evidence to show that the amount arises out of the landlords' actions. I dismiss this portion of the tenant's claim.

5) Filing Costs

The tenant has not succeeded in her claims and is not entitled to recover the filing fees, and preparation of evidence for this application. I dismiss this portion of the tenant's claim.

Analysis- Order that Landlord Comply

As this tenancy is ended I find it unnecessary to make a finding in regards to the tenant's application that the landlords comply with the Act, make repairs to the rental unit or provide services. I dismiss this portion of the tenant's application.

Analysis - Filing Fee

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$100.00 of the tenant's \$600.00 security deposit in satisfaction of the monetary award issued in the landlords' favour.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain \$100.00 from the tenant's security deposit to recover the landlords' filing fee for this application. I order that the retained value of the security deposit is reduced from \$475.00 to \$375.00.

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: March 28, 2017

Residential Tenancy Branch