



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF MNDC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the tenant requested:

- a Monetary Order for damage or loss under the *Act* pursuant to section 67;
- return of the Security Deposit pursuant to section 38; and
- return of the filing fee pursuant to section 72.

Both the landlord and the tenant appeared at the hearing. The landlord confirmed receipt of the tenant’s application for Dispute Resolution and evidentiary package by way of hand delivery on June 15, 2017. Pursuant to sections 88 and 89 of the *Act*, I find the landlord to have been served with the tenant’s application and evidentiary package on the same day as its hand delivery.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Is the tenant entitled to a monetary award for loss suffered under the tenancy?

Can the tenant recover the filing fee for the application?

Background and Evidence

Testimony was provided by both parties that this tenancy began on February 1, 2017. This tenancy was ended by way of an Order of Possession given by an Arbitrator following a June 28, 2017 hearing where the landlord was given an Order of Possession effective two days after it was served on the tenant. Rent was \$750.00 per month and a security deposit of \$350.00 continues to be held by the landlord. The Arbitrator's June 28, 2017 decision allowed the landlord to retain the tenant's security deposit in partial satisfaction for a monetary order awarded to the landlord.

The tenant has applied for a Monetary Order of \$2,640.00. The tenant sought this amount due to the loss of quiet enjoyment and services not provided to her during this tenancy.

Specifically, the tenant detailed in her testimony and on her monetary worksheet:

ITEM	AMOUNT
Return of Security Deposit	\$350.00
Rent Reduction for Services Not Provided (garbage/wifi)	350.00
Loss of Laundry (\$25.00/week for 15 weeks)	375.00
Loss of Heat	1,050.00
Loss of Quiet Enjoyment	1,500.00
TOTAL =	\$2,640.00

The tenant explained that during this tenancy the landlord entered her suite on multiple occasions, verbally harassed her and failed to provide her items that she was due under their tenancy agreement. The tenant stated that the landlord would not provide her with the wifi password, would not take her garbage and denied her access to the laundry. Furthermore, the tenant detailed how she suffered a great deal after the landlord removed a heater from her apartment. She said that all of this led her to suffer a loss of quiet enjoyment and ultimately led the tenant attend the hospital after she tripped and fell following the landlord removing a lightbulb from an outside area.

Witness H.J. described an incident when the landlord entered the tenant's rental unit without permission, though she could not identify the date when this occurred. Further testimony from witness K.L., recounted the landlord screaming at the tenant and her guests.

The landlord strongly denies all allegations by the tenant. She stated that an Arbitrator with the *Residential Tenancy Branch* had ruled that she was entitled to retain the

tenant's security deposit. Additionally, she disputed denying the tenant any service or ever entering the tenant's rental unit without prior written notice. She said she was not even aware that the tenant had a heater, and therefore never touched it.

A copy of the residential tenancy agreement entered into evidence by the landlord demonstrated that wifi and a washer/dryer were not included in the rent. The only additional utility provided as part of the tenancy agreement between the parties was hydro. During the hearing, the landlord also highlighted the addendum to the tenancy agreement which noted that, "One garbage can is available for tenant's use and is kept in garage. There will be no dumping in any other space. Landlord's usual use of pick up is twice per month; it is the tenant's duty to put his/her garbage or recycle at street and pick up containers after, when landlord is not using the service." This addendum continued by stating, "laundry services are upstairs and shared with landlord. Tenant is asked to dry clothing in the sun when appropriate and to ensure closure of all gates and doors into backyard area."

Furthermore, the landlord explained that she removed the lightbulb from the outside premises because the tenant had continued to leave it on at all hours of the day, despite the landlord's request not to do so.

The landlord explained that garbage services are provided by the Regional District and she informed the tenant that she must put her garbage in the garbage can provided to her in the garage. Following this, the garbage would be taken by the landlord to the people who collect it. The landlord said that the tenant failed to ever do this. Furthermore, the landlord stated that laundry facilities are shared, and located in the main home where the landlord lives. The landlord described an incident that occurred at the start of the tenancy when the tenant attempted to do laundry at 8:00 P.M., and was instructed that laundry facilities were only available during the day. The landlord said, the tenant never returned to do laundry following this incident.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

The tenant is seeking a Monetary Order of \$2,600.00. This is despite the fact that the figures submitted to the hearing as part of the tenant's oral testimony and monetary order worksheet amount to \$3,625.00. The tenant based the majority of her submissions on the alleged loss of value she experienced in the rental unit as a result of a denial of services, along with loss of quiet enjoyment. I will start with this latter issue of loss of quiet enjoyment and then focus on the alleged denial of services by the landlord.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Testimony was provided by the tenant and by her witnesses that the landlord entered the rental unit without permission, verbally harassed the tenant, removed a heater from rental unit and caused her to trip and fall. I acknowledge that while the tenant and her witnesses were consistent in their descriptions of the alleged wrongdoings of the landlord, very few details were provided to the hearing around these incidents. Neither the tenant nor her witnesses were able to describe a date on which the landlord entered the suite. Only one disputed account of a verbal altercation between the landlord and the tenant was described at the hearing, while little evidence other than disputed oral testimony was produced for the hearing alleging that a heater was removed from the rental unit by the landlord. The tenant presented submissions that the landlord removed an outside lightbulb which led her to trip and fall. This unfortunate accident caused her to seek medical attention at the local hospital. While photographs were submitted to the hearing of the tenant's wrist, no detailed medical report was provided explaining the extent of the tenant's injuries, nor were any descriptions of her injuries provided by a doctor. I find that because of insufficient detail presented to the hearing concerning the dates and circumstances surrounding these incidents, and because the harassment

does not appear to be *frequent and ongoing*, the tenant's application for a monetary award for loss of quiet enjoyment is denied.

The tenant has also applied for a monetary award, along with a retroactive reduction in rent due to services not being provided, specifically, wifi, laundry and garbage.

As mentioned previously, in order for a person to qualify for a monetary award under section 67 of the *Act*, a person must demonstrate that their loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. I find that no such connection was made by the tenant and the tenant had insufficient evidence that the landlord contravened the *Act* or the tenancy agreement. A copy of the residential tenancy agreement provided to the hearing as part of the landlord's evidentiary package demonstrates that wifi was not included as part of the tenancy agreement. Furthermore, the landlord testified that at no point did she ever deny laundry or garbage services to the tenant. She said that laundry services were available to the tenant; they were simply not utilized by the tenant following an incident that occurred at the start of the tenancy. In addition, the landlord stated that the garbage removal as described in the addendum to the tenancy agreement was again, always available to the tenant but that the tenant failed to adhere to the instructions for garbage collection. For these reasons, I deny the tenant a monetary award for a retroactive reduction of rent.

Conclusion

The tenant's monetary order 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: July 21, 2017

Residential Tenancy Branch