Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to cancel a Notice to End Tenancy for Landlord's Use of Property; for a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that she did not intend to apply to cancel a Notice to End Tenancy for Landlord's Use of Property. I therefore will not be considering that claim.

The Tenant stated that she sent the Application for Dispute Resolution, the Notice of Hearing, and the 29 pages of evidence she submitted with the Application to the Landlord, via registered mail, although she cannot recall the date of service and she could not locate the receipt for this mailing.

As the Landlord submitted evidence in which he responded to the claims being made by the Tenant, I find that the Landlord was aware of the Application for Dispute Resolution. I therefore accept the Tenant's testimony that the aforementioned documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)* and the evidence was accepted as evidence for these proceedings.

The Tenant stated that she sent the Amendment to an Application for Dispute Resolution to the Landlord and the one page of evidence she submitted to the Residential Tenancy Branch on February 22, 2017, via registered mail, on March 10, 2017. The Tenant cited a tracking number that she stated relates to this mailing. In the absence of evidence to the contrary I accept that these documents were served to the Landlord in accordance with section 89 of the *Act* and the evidence was accepted as evidence for these proceedings.

On July 19, 2017 the Tenant submitted 19 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via

registered mail, on May 12, 2017. The Tenant cited a tracking number that she stated relates to this mailing. In the absence of evidence to the contrary I accept that this evidence was served to the Landlord in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings.

On July 06, 2017 the Landlord submitted 12 pages of evidence to the Residential Tenancy Branch, two of which were a written response from the Landlord. The Tenant stated that the only evidence she received from the Landlord was the two-page written response. As the Tenant acknowledged receiving the two-page written response, it was accepted as evidence for these proceedings.

As the Landlord did not attend the hearing to explain how the remaining 10 pages of evidence was served to the Tenant and the Tenant did not acknowledge receiving those 10 pages, I find that the Landlord failed to establish that these 10 pages were served in accordance with section 88 of the *Act.* I therefore cannot accept these 10 pages as evidence for these proceedings

Issue(s) to be Decided:

Is the Tenant entitled to compensation for deficiencies with the rental unit, a breach of her right to quiet enjoyment, and/or moving costs?

Background and Evidence:

The Tenant stated that:

- this tenancy began on September 01, 2016;
- her monthly rent of $900.00 was due by the first day of each month;
- on November 15, 2016 she was served with a Two Month Notice to End Tenancy, which declared she must vacate the unit by January 31, 2017;
- she vacated the rental unit on February 04, 2017; and
- she did not pay rent for January of 2017.

The Tenant is seeking compensation for moving costs in the amount of $400.00. The Tenant was advised that she is entitled to compensation, equivalent to the amount of one month's rent, because she was served with a Two Month Notice to End Tenancy for Landlord's Use of Property. She was advised that this compensation is intended to compensate her for the inconvenience and costs of moving. The Tenant was unable to explain why she was entitled to more than the equivalent of one month's rent.

The Tenant is seeking compensation, in the amount of $180.00, because the Landlord did not provide her with a mailbox. The Tenant stated that:

- prior to this tenancy beginning the Landlord told her she could have a mailbox;
- the Landlord did not tell her that he would pay for the cost of that mailbox;
- the Landlord simply told her she needed to go to the general store and obtain a key for a mailbox;
- she assumed the cost of the mailbox would be included in the rent, as she understood that all landlords were required to provide a mailbox, even when mail is not delivered directly to the rental unit by Canada Post; and
- Canada Post does not deliver mail directly to the rental unit.

The Tenant is seeking compensation for the cost of showering off-site, in the amount of $100.00, and for bottled water, in the amount of $100.00.

The Tenant stated that shortly after moving into the rental unit she developed a skin irritation and began experiencing a variety of symptoms, including nausea, diarrhea, and dizziness. She stated that she expressed concern about the quality to the water to the Landlord, who assured her there was nothing wrong with the water.

She stated that sometime in October she contacted the local health authority regarding her concerns with the well water. The Tenant submitted a copy of an email she received from the local health authority, dated November 17, 2016, in which the health authority informed her, in part, that:

- the water sample tested had an “estimated 2 E.coli and an estimated 67 total coliforms;
- the E.coli is not necessarily a pathogenic strain and may not cause illness;
- the lab does not test for other pathogenic bacteria;
- the water should be boiled prior to using for drinking, brushing teeth, and washing vegetables;
- alternatively, the water can be disinfected by adding one drop of non-scented bleach per liter of water; and
- the water is safe for showering and laundry although care should be taken to avoid ingestion in the shower.

The Tenant stated that because of her concerns with the water she did not shower/bathe in the rental unit, in spite of the information provided by the local health authority. She stated that she opted to shower at the local pool rather than risk using the water.

The Tenant stated that because of her concerns with the water she did not use the water for drinking or brushing her teeth. She stated that she opted to use bottled water rather than risk drinking the water.

The Tenant stated that she informed the Landlord about the results of the water testing but he did nothing to address the problem.

The Tenant submitted a document from her medical practitioner in response to her reports of symptoms related to contaminated water. The physician's assessment is the "Sx consistent with anxiety" and that she needs to "allay her anxiety".

The Tenant is seeking compensation, in the amount of $100.00, for medications she used to treat her symptoms she attributes to the quality of water in the rental unit.

The Tenant submitted a receipt for a prescription, in the amount of $39.46. The copy of the receipt submitted in evidence does not declare the name of the medication, however the Tenant stated it was for suicinacid. She stated that this medication was used to treat foot fungus she developed as a result of the contaminated water.

The Tenant submitted a receipt for a "parasite purge", in the amount of $29.39. She stated that her doctor recommended that she try this natural remedy.

She stated that she purchased several other medications, although she did not submit receipts for those medications.

I note that there is no medical evidence that establishes the Tenant was directed to take medication as a result of being in contact with contaminated water.

In his written submission the Landlord does not declare that he took any actions to improve the quality of the water after the health authority notified him of a problem with water quality.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, because of the quality of water in the rental unit.

The Tenant is seeking compensation for loss of quiet enjoyment, in part, because she feels the Landlord was harassing her.

In support of her claim that the Landlord was harassing her, the Tenant stated that the Landlord sent her harassing text messages. When asked to refer to an example of a harassing text message the Tenant referred to a text message dated September 10, 2016, in which the Landlord asked her where she got her moisturizing cream and that he really liked it.

In support of her claim that the Landlord was harassing her, the Tenant stated that the when she was painting the rental unit the Landlord would brush up against her and call her “sweet names”. She stated that she did not tell the Landlord this was bothering her as she chose to ignore it.

In support of her claim that the Landlord was harassing her, the Tenant stated that the Landlord threatened to tow her car, although he never did. The Tenant was unable to explain why the Landlord threatened to tow her car.

In support of her claim that the Landlord was harassing her, the Tenant stated that the Landlord told her to rake the gravel the snow plow had disturbed. She stated she did not rake the gravel and he did not ask her a second time. She could not explain why the Landlord asked her to rake the gravel.

In support of her claim that the Landlord was harassing her, the Tenant stated that the Landlord sent two other tenants to her door. She stated that one of the tenants came to her door to offer her apples and the second tenant came to her door to be social. She stated that she believes the Landlord sent the tenants to her door because he later told her that she was not friendly.

At this point the Tenant was advised that I considered some of her examples of harassment to be frivolous and she was directed to provide examples of harassment that were more substantive. At this point she stated that the Landlord had harassed her by leaving a dead deer approximately five feet from her door. Upon further questioning she stated that she does not know if the Landlord is a hunter and she does not know if the Landlord left the deer near her door.
In support of her claim that the Landlord was harassing her, the Tenant stated that she had told her son he could not play in the chicken coop or the pond and the Landlord told her son that there was nothing wrong with playing in those areas. She stated that her son did play in those areas and subsequently became ill.

At this point the Tenant was advised there was insufficient time to continue the hearing. She was advised that the hearing would be adjourned to provide her with additional time

to present her evidence and she stated that she did not want an adjournment and that she had adequately presented her evidence.

Analysis:

On the basis of the undisputed evidence I find that this tenancy ended on the basis of the Two Month Notice to End Tenancy for Landlord's Use of Property, which was served pursuant to section 49 of the *Act.*

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. On the basis of the undisputed evidence I find that the Tenant did not pay rent for January of 2017 and she has, therefore, been properly compensated pursuant to section 51(1) of the *Act.*

As the Tenant was required to vacate the rental unit on the basis of the Two Month Notice to End Tenancy for Landlord's Use of Property and she received the proper compensation that is due to her pursuant to section 51(1) of the *Act*, I can find no reason to conclude that she is entitled to additional costs for moving. Compensation pursuant to section 51(1) of the *Act* is intended to compensate her for the inconvenience and costs of moving. I therefore dismiss the Tenant's application for $400.00 in moving costs.

There is nothing in the *Act* that requires landlords to provide a mail box to a tenant when Canada Post does not deliver mail directly to the rental unit, as is the case in these circumstances. There is nothing in the tenancy agreement that indicates the Landlord will pay for a mail box. As there is nothing in the tenancy agreement or the *Act* that requires the Landlord to pay for the cost of a mail box in an off-site location, I dismiss the Tenant's application to recover the cost of a mail box.

In adjudicating the claim for a mail box I was heavily influenced by the Tenant's testimony that the Landlord never told her he would pay for the cost of that mailbox and she simply assumed the cost of the mailbox would be included in the rent. As there is no evidence to show that the Landlord made a verbal agreement to pay for a mail box, I cannot conclude that he was obligated to do so.

I find that the Tenant submitted insufficient evidence to establish that she needed to shower off-site as a result of the water in the rental unit. In reaching this conclusion I

was heavily influenced by the email from the local health authority in which the Tenant was informed that the water is safe for showering although care should be taken to avoid ingestion in the shower. I find this email to be the most reliable evidence of the quality of water in the rental unit and I find that the Tenant did not need to shower off-site. I therefore dismiss her claim for compensation for showering elsewhere.

I find that the Tenant submitted insufficient evidence to establish that she needed to use bottled water. In reaching this conclusion I was heavily influenced by the email from the local health authority in which the Tenant was informed of two methods of rendering the water potable. I find this email to be the most reliable evidence of the quality of water in the rental unit and I find that the Tenant did not need to use bottle water. I therefore dismiss her claim for compensation for bottled water.

I find that the Tenant submitted insufficient evidence to establish that a medical practitioner recommended that she take medication as a result of being in contact with contaminated water. Rather, I find that the medical evidence submitted indicates that the medical practitioner suggested that the Tenant needs to "allay her anxiety". In the absence of evidence to corroborate the Tenant's testimony that the medications were recommended by a medical practitioner as a result of exposure to contaminated water, I dismiss her claim to recover the costs of any medication/treatment.

Section 27 of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if that service of 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.

If the landlord terminates or restricts a service or facility, other than one that is essential o a material term of a tenancy the landlord must provide 30 days' notice and reduce the ren in an amount that is equivalent to the reduction in the value of the tenancy.

On the basis of the email from the local health authority I find that on November 17, 2016 the Tenant's right to potable water was restricted when she received an advisory from the local health authority that she should boil her drinking water. I find that the inconvenience of treating her drinking water reduced the value of her tenancy by 5%, which is $45.00 per month. I therefore find that she is entitled to compensation for the approximately 2.5 months she was required to treat the drinking water, which is $112.50.

In determining the amount of compensation due to the Tenant as a result of the quality

of the water in the rental unit I have placed no weight on her submission that she experienced a variety of symptoms as a result of exposure to contaminated water, as there is no medical evidence that correlates her symptoms to the water.

I find that the Tenant submitted insufficient evidence to establish that the Landlord was sending her harassing text messages. In reaching this conclusion I find that the Tenant did not submit copies of any text messages from the Landlord which I consider to be harassing. I find the text message of September 10, 2016 in which the Landlord asked the Tenant where she got her moisturizing cream does not constitute harassment.

I find that the Tenant submitted insufficient evidence to establish that the Landlord was harassing her by brushing against her while she was painting and by calling her “sweet names”. Even if the Landlord did brush against the Tenant and call her “sweet names”, I find that it is incumbent upon the Tenant to inform the Landlord the behavior is unwanted. In the event the behavior continued after being advised it was unwanted, the behavior could be considered harassment, but in these circumstances I find that has not been established.

In the absence of any details of the Landlord’s “threat” to tow the Tenant’s car, I cannot conclude that “threat” constitutes harassment. I find it entirely possible, for example, that the Tenant was told her car would be towed if she parked in a fire lane or another tenant’s assigned parking space.

I find that the Tenant submitted insufficient evidence to establish that the Landlord was harassing her when he asked her to rake gravel. In the absence of the details surrounding that request, I cannot conclude that the request constitutes harassment. I find it entirely possible, for example, that the Tenant was asked to rake the gravel because she expressed concern about the gravel and the Landlord did not believe it needed raking.

I find that the Tenant submitted insufficient evidence to establish that the Landlord sent two tenants to her door. I find it entirely possible the tenants who came to her door were simply trying to be neighborly. I find the Tenant’s conclusion that the Landlord sent them to the door is mere speculation. I therefore cannot conclude that these incidents support the Tenant’s claim for harassment.

I find that the Tenant submitted insufficient evidence to establish that the Landlord left a dead door near her rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that establishes the Landlord left the deer on the property or

that the deer was left with the intent of harassing the Tenant. I therefore cannot conclude that this incident supports the Tenant's claim for harassment.

I find that the Tenant submitted insufficient evidence to establish that the Landlord was harassing her when he told her son that it was safe to play in the pond and chicken coop. In the absence of evidence to corroborate the Tenant's belief that it was unsafe to play in those areas, I cannot conclude that the Landlord's actions constitute harassment. In considering this incident I note that no medical evidence was submitted that correlates her son's health issues with the pond/chicken coop.

After considering all of the Tenant's testimony I find that she has submitted insufficient evidence to establish that the Landlord interfered with her right to quiet enjoyment of the rental unit. I therefore dismiss the Tenant's application for compensation for loss of quiet enjoyment.

I find that the Tenant has established that her claim has some merit and I therefore find that she is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of $212.50, which includes $112.50 for being required to treat her drinking water for approximately 2.5 months and $100.00 for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: August 09, 2017

Residential Tenancy Branch