



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlords including return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference on November 28, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 respective 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. Is the Tenant entitled to return of double her security deposit?
2. Is the Tenant entitled to monetary compensation for breach of quiet enjoyment?
3. Is the Tenant entitled to monetary compensation for breach of a material term of her tenancy agreement?

4. Should the Tenant recover the filing fee paid?

Background and Evidence

The Tenant testified that the tenancy began December 1, 2015. She confirmed that she paid \$600.00 as a security deposit.

The Tenant stated that when she moved into the rental unit the Landlords did not perform a move in condition inspection report. She also stated they also did not perform a move out inspection.

The tenancy ended May 31, 2017. The Tenant returned the keys to the rental unit and provided the Landlords with her forwarding address by handing it to the Landlord, R.E., on that date. She also stated that she sent her forwarding address to the Landlords by registered mail on May 30, 2017. A copy of the tracking number for the registered mail package is provided on the unpublished cover page of this my Decision.

The Tenant confirmed that she received \$600.00 from the Landlord following service of her application materials on June 21 or 22, 2017 such that the Landlords returned her deposit after the required 15 days. In the within hearing she sought \$600.00 representing the balance of double the deposit.

The Tenant stated that she sought the sum of \$800.00 for breach of quiet enjoyment. She stated that she believed this was an appropriate amount, as she suffers from insomnia and PTSD and has difficulty sleeping, and her son is sick. She stated that her claim arose from an evening when she was disturbed by carpet cleaning. She claimed that on April 21, 2017, the Landlord, R.E., had the carpets cleaned from 9:00 or 9:30 p.m. until 11:00 p.m. such that although she went to sleep earlier she was woken up by the carpet cleaning upstairs.

In terms of her request for compensation for breach of a material term of the tenancy agreement, the Tenant stated that she did not have her garbage picked up between April 5, 2017 to May 1, 2017. She claimed that it was the Landlords' fault, because the previous Landlords discontinued garbage pick-up when they sold the property and it wasn't started again until the beginning of May 1, 2017. She confirmed that on April 21, 2017 she took her garbage to the other Landlords, D.Z. and A.Z. She also stated that the Landlord, R.E., offered to take the garbage to D.Z. and A.Z.'s house on April 21, 2017, but the Tenant declined.

In reply to the Tenant's submissions, the Landlord, R.E., confirmed that they took possession of the rental unit on April 18, 2017. She stated that the Tenant received a 2 Month Notice to End Tenancy for Landlord's Use, such that the Tenant did not pay rent for the month of April 2017. She further confirmed that she did not do a move in inspection, although she sent a text asking the Tenant to do an inspection and the Tenant refused.

R.E. also stated that she could not afford to have the carpet upstairs professionally cleaned and she had her friend do it and the only time he could do it was in the evening on April 21, 2017.

R.E. also stated that she offered to take the Tenant's garbage as soon as the Tenant brought it to her attention. She stated that the Tenant refused. She also confirmed that the distance between the rental unit and the place she asked the garbage to be dropped off, the other Landlords' home, was 150 meters.

A.Z. confirmed that the Tenant received a two month notice to end tenancy such that she did not pay rent for the month of April 2017. She also claimed that they did not receive the \$600.00 security deposit from the previous Landlord.

R.E. confirmed that the security deposit was dealt with by way of the statement of adjustments in the sale of the property.

Analysis

After consideration of the evidence before me and on a balance of probabilities I find as follows.

I find the Landlords failed to perform a move in and move out condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*. Sending a text message requesting an inspection is insufficient. Pursuant to sections 16 and 17 of the *Regulations*, the Landlord must provide two opportunities for an inspection, and must serve a Notice of Final Opportunity for to Schedule a Condition Inspection in RTB – 22A.

The parties agreed that the Tenant provided her forwarding address in writing as of the end of the tenancy. The Landlords did not apply for dispute resolution and returned the deposit more than 15 days after receipt of the Tenant's forwarding address and the end

of the tenancy. In doing so, the Landlords failed to follow section 38 which reads as follows:

Return of security deposit and pet damage deposit

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.

The Landlords failed to apply for dispute resolution, or return the Tenant's deposit within 15 days of receipt of her forwarding address in writing. As such, and pursuant to sections 38(1) and (6) the Tenant is entitled to return of double her security deposit in the amount of **\$1,200.00**. As the Landlords returned \$600.00, the Tenant is entitled to the balance of **\$600.00**.

I will now address the Tenant's claim for compensation for breach of her right to quiet enjoyment.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlords breached section 28. While I accept the Tenant's evidence that the carpet cleaning on the evening of April 21, 2017 was disruptive I find this to be a temporary discomfort or inconvenience not warranting compensation. I therefore dismiss the Tenant's claim for compensation for breach of quiet enjoyment.

I also find the Tenant has failed to prove her claim for breach of a material term of a tenancy agreement.

Firstly, I find that garbage retrieval is not, by definition, a material term. *Residential Tenancy Branch Policy Guideline 22: Termination or Restriction of a Service or Facility* defines material term as follows:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the

creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

Secondly, a review of the calendar confirms that April 14, 2017 and April 17, 2017 were statutory holidays such that the regularly scheduled pick up during the week of April 17 would have likely occurred on April 21, 2017. As the Landlords offered to retrieve the Tenant's garbage on this date, I find she suffered no losses. I therefore dismiss her claim for compensation.

Having been only partially successful, I find the Tenant is entitled to recover one half of the filing fee in the amount of **\$50.00**.

Conclusion

The Tenant is granted a Monetary Order in the amount of **\$650.00** representing the balance of double her security deposit and recovery of one half of the filing fee. This Order must be served on the Landlords and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

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: December 8, 2017

Residential Tenancy Branch