



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KERMADEC HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, PSF, RP

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations and tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, to provide services and facilities included in the tenancy agreement and for repairs to the property.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 20, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so how much?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?
3. Have services or facilities included in the tenancy agreement been withheld?
4. Are there repairs to be done to the property?

Background and Evidence

This tenancy started on June 1, 2017 as a month to month tenancy. Rent is \$575.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$287.50 at the start of the tenancy. No condition inspection report was completed at the start of this tenancy.

The Tenant said she has made this application because of problems in the rental unit that the Landlord has not responded to or was slow in correcting. The Tenant said that when she moved in the dryer in the coin laundry was not working so she had to take a cab to the closest laundry facility to do her laundry. The Tenant said she is applying for \$135.00 to cover the costs she incurred to do laundry.

As neither party submitted a copy of the tenancy agreement the Arbitrator asked the Tenant if laundry facilities were included in the tenancy agreement. The Tenant read the tenancy agreement and laundry services were not checked of as included in the tenancy agreement. The Tenant said there are coin laundry machines in the building and the dryer was not working when she moved in.

The Landlord said they did have problems with the coin operated dryer but it was replaced in July, 2017. The Landlord said the coin operated laundry machines are for the Tenants use but they are not part of the tenancy agreement.

The Tenant continued to say that she is requesting \$500.00 for the loss of use of the stove in the rental unit from October 3, 2017 to December 4, 2017. The Tenant said in September, 2017 she complained to the Landlord that there was a smell of gas in the rental unit. The Tenant continued to say the Landlord did nothing about it so she phoned the Fire Department. The Tenant said the Fire Department ordered the gas be turned off to the stove. This was done on October 3, 2017 and the Tenant said she lost the use of her stove until a new stove was installed on December 4, 2017. The Tenant said she spent \$500.00 on restaurants because she had no stove to cook her meals.

The Landlord said the delay in replacing the stove was first because another tenant thought he could fix the stove by relighting the pilot light. The Landlord said this did not fix the stove so they ordered a new stove on October 21, 2017. The new stove was installed when it came in on December 4, 2017. The Landlord said they tried to replace the stove as soon as they could but because the stove was a special small size it had to be special ordered. The Landlord said the Tenant has not proven that she spent \$500.00 on restaurants because the stove was not working in the rental unit.

The Tenant continued to say that she has had health issues including migraine headaches because of the smell in the rental unit. The Tenant said the smell started about 2 months after she moved in and it is like beach or chlorine. The Tenant said it is serious and she went to a walk in clinic for help. The Tenant said the Doctor gave her some medication for headaches. The Tenant continue to say she does not know what the smell is or where it is coming from but the Landlord has done nothing about the smell and it is a serious problem for her health. As a result the Tenant said she is requesting \$1,000.00 for her suffering. As well the Tenant said she has withheld the January, 2018 rent until the Landlord does something to correct the smell in her rental unit.

The Landlord said she and the manager have both been in the Tenant's rental unit and there is no smell. The Landlord said it may be the chorine in the water that is bothering the Tenant but the Landlord has no control of the water supply.

The Landlord said in closing the Tenant is a difficult person, the Landlord replaced the stove as soon as they could and there is no smell in the Tenant's rental unit.

The Tenant said in closing the Landlord is slow or does not respond to requests to maintain the rental unit. The Tenant continued to say there is a smell in the rental unit that is causing her health problems and she was without a stove for 3 months. The Tenant said she should be compensated for these issues.

Analysis

I have reviewed the testimony and evidence submitted prior to the hearing.

Firstly although a tenancy agreement was not submitted in the evidence the parties agreed that the tenancy agreement did not include laundry facilities. The Landlord does provide coin operated laundry machines but this is not part of the tenancy agreement. Many landlords do this and the coin operated laundry machines are considered a separate business to the tenancy agreement. I find the Landlord is not bound to provide laundry facilities under this tenancy agreement. Consequently the Tenant's claim of \$135.00 for the loss of laundry facilities is dismissed without leave to reapply because laundry facilities are not part of the tenancy agreement.

With regard to the Tenant's claim of \$500.00 for the loss of use of the stove. It is unclear exactly how long the stove was not functioning correctly. The Tenant said problems started in September, 2017 and the Landlord said they hired a gas fitter to turn the gas off to the stove on October 3, 2017 after being ordered to do so by the Fire Department. I accept the Tenant's testimony that the stove had problems or was unusable from September, 2017 to December, 4, 2017. The Tenant may have lost the use of the stove for up to three months and I find the Landlord was slow in correcting the stove problem. A gas leak is a serious matter that a professional is needed to deal with. Consequently, I find for the Tenant and award the Tenant \$500.00 for loss of use of the stove and inconvenience for 3 months.

Further the Tenant has requested \$1,000.00 for health issues that the Tenant claims are a result of the air quality in the rental unit. These damages are known as aggravated damages and are explained in Policy Guideline # 16.

Policy Guideline #16

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been

caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this situation the Tenant has requested \$1,000.00 for health issues that she believes are caused by the smell in her rental unit. For the Tenant to be successful there must be corroborative evidence that the Tenant's health issues are a result of the smell or environment in the rental unit and the Tenant must prove the Landlord is responsible for the smell in the rental unit. The Tenant said she went to a walk in clinic but no medical evidence was submitted to support the Tenant's claim that the environment in the rental unit was the cause of her health issue. Further the Tenant is also responsible to prove that the Landlord is responsible for the smell in the Tenant's rental unit. The Tenant has not provided any corroborative evidence that the Landlord's actions are responsible for the smell. In fact the Tenant said she does not know what the smell is or where the smell is coming from. The Landlord says she and the manager have been in the rental unit and they have not smelled any odour. Consequently I dismiss the Tenant's claim for loss or damage of \$1,000.00 for aggravated damages due to lack of evidence.

The Tenant has also requested the Landlord to comply with the Act and to complete the investigation and repair if necessary for the smell in the rental unit. I order the Landlord to hire a professional trades person with the background to determine if there is a smell in the Tenant's rental unit and if found to correct the issue. The Landlord is ordered to complete the investigation in a timely manner.

Conclusion

A Monetary Order in the amount of \$500.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 17, 2018

Residential Tenancy Branch