# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, MNDCT, LAT, OLC, LRE, RP, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:'

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- 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;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlords' legal counsel P.D. (counsel) also attended and stated that he would be the primary speaker for the landlord in conjunction with the landlord when required. Tenant AL.B. (the tenant) stated that she would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (Application) that was sent by Canada Post Registered mail on October 04, 2017. In accordance with section 89 of the *Act*, I find the landlord has been duly served with the Application.

The landlord acknowledged receipt of the tenant's evidentiary package that was sent by Canada Post Registered mail on October 13, 2017. In accordance with section 88 of the *Act*, I find the landlord has been duly served with the tenants' evidentiary package.

The tenant acknowledged receipt of the landlord's evidence which served to the tenants by leaving it on the front step of the rental unit on November 29, 2017. Although the landlord's evidence was not served in accordance with section 88 of the *Act*, the tenant has acknowledged receipt and I find that, in accordance with section 71 of the *Act*, the tenants are duly served with the landlord's evidence.

Preliminary Matters

At the outset of the hearing the landlord stated that they are withdrawing the One Month Notice and have issued a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) in November 2017.

The tenants confirmed that they have accepted the Two Month Notice and intend on vacating the property at the end of February 2018. For this reason the tenant requested to withdraw the majority of their claim. The tenant submitted that they are now only seeking compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord.

The tenants' Application to cancel the One Month Notice and all issues, other than compensation for damage or loss under the *Act* and authorization to recover the filing fee, are withdrawn.

Section 38 of the *Act* establishes that a landlord is only obligated to address the security deposit after the tenancy has ended and the tenants have provided their forwarding address in writing to the landlords. As this tenancy had not yet ended as of the date of the hearing, I find the tenants have no legal right for the return of the security deposit at this time. For this reason, I dismiss the tenants' Application for the amount of $1,900.00, to recover the combined security and pet damage deposit from the landlord, with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlord provided written evidence that this tenancy began on February 10, 2017, with a monthly rent of $1,900.00 due on the first day of each month. The landlord submitted that they currently retain a security and pet damage deposit in the amount of $1,900.00. The tenancy agreement indicates that free laundry is included as a part of the tenancy agreement. An addendum, dated January 29, 2017, which forms a part of the tenancy agreement is also provided and clarifies yard maintenance, snow removal and the split of electricity and gas utilities charges with lower occupants

The landlord also submitted into evidence a copy of an 'Application Response" which addresses the landlord's position regarding all claims made by the tenants.

The tenants submitted into evidence a copy of a detailed written response which includes a breakdown of the monetary claim being made by the tenants. The tenants' breakdown of their claim is for:

1. $4,081.07 – this amount is equal to 25% of rent paid from February 2017 to October 2017 for repairs that went unaddressed for excessive periods of time;
2. $816.21 – this amount is equal to 5% of rent paid from February 2017 to October 2017 for breach of a material term of the tenancy agreement for the landlord failing to provide the tenants with a private laundry room;
3. $4,081.07 – this amount is equal to 25% of rent paid from February 2017 to October 2017 for loss of quiet enjoyment, loss of reasonable privacy, freedom of unreasonable disturbance and exclusive possession of the rental unit; and
4. $100.00 – this amount is equal to the filing fee for this Application that the tenants would like to recover from the landlord.

The tenants also submitted an evidence package consisting of pictures taken inside of the rental unit and copies of e-mails and text messages exchanged between the tenants and the landlord.

The tenant testified that when they initially viewed the recently renovated rental unit on January 29, 2017, the landlord indicated to them that the washer and dryer would be installed in the next few days. The tenant submitted that at this time they signed the tenancy agreement to move into the rental unit on February 10, 2017. The tenant stated

that on January 31, 2017, the landlord confirmed by e-mail that that there were still repairs under way which were to be completed by the following Monday.

The tenant testified that when the tenants moved into the rental unit on February 10, 2017, the rental unit was not cleaned, in a state of disrepair and the washer and dryer were not installed. The tenant referred to pictures in their evidence package. The tenant stated that she sent the landlord an e-mail with the tenants' concerns.

The tenant submitted that on February 11, 2017, the heat stopped working in the rental unit and was not repaired for three days. The tenant testified that the heat in the rental unit is dependent on a water heater that is not accessible to the tenants, but is accessible to the occupants in the lower unit. In a text sent to the landlord on June 04, 2017, the tenant mentions that the water heater had failed again for the third time in five months. The tenant stated that issues with the water heater have been ongoing throughout the tenancy with the most recent incident occurring on October 11, 2017.

The tenant submitted that they notified the landlord by text on February 20, 2017, that the patio doors were painted shut and the blinds were not installed properly resulting in them falling down.

The tenant stated that on February 23, 2017, there was construction in the unit below which was interfering in the tenant's ability to conduct her business and the tenant noted to the landlord that she could clearly hear the construction workers talking which raised concerns about whether there was a sound barrier between the upper and lower units. The tenant stated that this continued to be an issue when the occupants moved into the lower unit and that the noise travelled to their daughter's room, who was unreasonably disturbed with some of the sounds coming from the lower unit. The tenants mention in their evidence another incident which occurred in June 2017 when the landlord had a landscaping crew working on the yard

In an e-mail to the landlord on February 28, 2017, the tenant inquired about outstanding items in need of attention which included but were not limited to the washer still needing a drain hose, a hallway closet door handle that came off, flood lights that would not turn off and no caulking along the shower doors or around the faucet in the stand-up shower in the ensuite bathroom which resulted in water leaking when they would use it. The tenant testified that this issue with the stand-up shower has still not been resolved as of the time of the hearing. The tenant further testified that the washer was still not repaired as of an e-mail sent to the landlord on March 03, 2017.

The tenant recounted that on March 01, 2017, they asked to have a divider door opened on behalf of the occupants in the lower unit to move a sectional couch. The tenant obtained a key from the landlord, which was given to the occupants in the lower unit. The tenant stated that the landlord never retrieved the key back from the occupants which ultimately resulted in the occupants entering the tenants' rental unit at some point in June 2017 to play with the tenants' dog without the tenants' permission.

Counsel submitted that the tenants wanted to move into the rental unit as soon as possible, before the washer and dryer were installed and that a snow storm further delayed the installation. Counsel stated that sound barriers are not required for the house and that it is built to the standards of the building code. Counsel further stated that wooden homes are not good for natural sound barriers between rooms.

The landlord stated that the key for the divider door was dropped off for the tenant and that the tenant gave the key to the occupants in the lower unit.

The landlord testified that the floodlights are motion activated so that it is easier to get around the house at night but that cars driving by the house also activate the lights.

The landlord maintained that the laundry was to be shared between the lower occupants and the tenants and that there was no agreement for the tenants' exclusive use of the laundry room.

Counsel submitted that the items that the tenants are claiming a 25% reduction in rent for are not considered services or facilities as per section 27 of the *Act* and disputes the tenants' claim that a quarter of the house was unusable. Counsel maintained that the items that the tenants mention, which they claim are devaluing the tenancy, are actually the landlord's losses and not the tenants. Counsel contended that the *Act* does not contemplate losses suffered by tenants for missing door handles or window blinds falling down and that these issues are just a part of day to day renting nuisances and does not rise to level of significant interference. Counsel further contended that there is a difference between repairs and emergency repairs such as broken seat vs plumbing issues.

The tenants responded that it is insulting to reduce their claim as minor annoyances. The tenant maintained that having the windows sealed shut is a fire hazard, heating in the rental unit has been an issue and that the water heater is still not fixed. The tenant stated that the landlord did not do repairs in a timely fashion.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenants bear the burden to prove that exclusive access to the laundry facilities was a material part of the tenancy agreement and that sharing the laundry facilities with the lower occupants caused the tenants a loss in the value of their tenancy. Furthermore, a material term is a term that the parties agree at the start of the tenancy is so significant to the tenancy that if one party breaches the term the tenancy will end. As a result, if the landlord had in fact breached a material term of the tenancy the tenant's remedy was to end the tenancy.

Based on the documentary evidence and affirmed testimony, and on a balance of probabilities, I find that the tenants did not have the exclusive use of the laundry facilities as a material part of their tenancy agreement. I find that the tenancy agreement only indicates that laundry is included as a part of the tenancy agreement, not that the tenants have exclusive use of the laundry facilities. I further find that the addendum has no indication that the laundry facilities are private.

However, I do find that the addendum demonstrates that the tenants were aware from the beginning of the tenancy that there were to be lower occupants. I find it reasonable to conclude that the tenants had inspected the rental unit to establish that the laundry facilities were located between the two units. I find that it is unlikely that the landlord would offer the use of the laundry facilities to one of the rental units but not the other when the laundry facilities are located between the two units.

For the above reasons, I dismiss the tenants' Application for the amount of $816.21, for a breach of a material term of the tenancy agreement regarding private laundry, without leave to reapply.

The tenant bears the burden to prove that the landlord has failed to ensure the tenants' enjoyment of the unit, including the right to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit. I further find that the tenants bear the burden to prove that a tangible loss was incurred by the tenants.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment, including but not limited to, reasonable privacy and freedom from unreasonable disturbance. RTB Policy Guideline #6 states that "a breach of quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises…. and that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to 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."

Based on the documentary evidence, affirmed testimony, and a balance of probabilities I find that the tenants have failed to demonstrate that the landlord has failed to ensure the tenants' quiet enjoyment of the unit. I find that the incident with the occupants in the lower unit coming into the unit was not caused by the landlord as the landlord did not give the lower occupants the keys, rather, that the key was left in the mailbox for the tenants who in turn gave it to the lower tenants. I find that the retrieval of the key was the tenants' responsibility as the landlord gave it to the tenants, not the lower occupants.

I find that the tenants have failed to demonstrate that they suffered a loss from being unreasonably disturbed. I find that there is only evidence of a few isolated incidents which temporarily inconvenienced the tenants. I find that a few isolated incidents with construction and landscaping crews which temporarily inconvenienced the tenants are not considered a substantial interference with the ordinary and lawful enjoyment of the premises and are not considered frequent. I find that there is no evidence as to the extent that the disturbances were ongoing. I find there is no evidence of communication between the tenants and the lower occupants regarding any noise issues between the units and the effects on the tenants' daughter or the tenants' business.

I find that the tenants have not demonstrated any tangible loss suffered in their business due to these incidents other than temporary discomfort and inconvenience. I further find

that the landlord has rented a residential premise to the tenants and it is not the landlord's responsibility to provide the tenants with a place to do their business with clients.

For the above reasons, I dismiss the tenants' Application for the amount of $4,081.07, for compensation for loss of quiet enjoyment for the period of February 2017 to October 2017, without leave to reapply.

I find the tenants bear the burden to prove that they suffered a loss as a result of the numerous repair issues for the period of February 2017 to October 2017.

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant.

Based on the documentary evidence and affirmed testimony, I find that the majority of the tenants' claims for repair issues are for blinds falling down, missing door handles, flood lights, minor damage and stains. I further find that the tenants have failed to demonstrate that these items are in contravention of the building code and have rendered the rental unit unsuitable for occupation and in turn have caused the tenants a tangible loss. I find that these repair items are minor and I accept counsel's assertion that these losses are the landlord's losses as opposed to simple inconveniences to the tenants.

Regarding the windows being painted shut, I find the section of the BC building code that the tenants quoted in their evidence submission only indicates that there must be an outside window and gives the minimum dimensions that the window openings must be. I find that the quoted section of the code does not indicate that the windows are required to be able to open. For the above reasons, I dismiss all monetary claims associated with these issues, without leave to reapply.

However, section 27 of the *Act* establishes that a landlord must not terminate or restrict services or facilities that are essential to the tenants' use of the rental unit as living accommodation, or are material terms of the tenancy agreement.

I find that laundry is defined as a service or facility under the *Act.*

I find that, although the laundry facilities are indicated as free on the tenancy agreement, it is reasonable to conclude that access to laundry facilities would have

been a determining factor in the tenants finding the rental unit to be suitable for rent and that the tenants acceptance of the amount of the monthly rent requested for the rental unit was due in part to the laundry facilities being provided as a part of that agreement. For this reason, I find that the laundry facilities form a part of the tenancy agreement. I find that the evidence and testimony can only verify that that the tenants were without the laundry facilities from February 10, 2017, until March 03, 2017.

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.

RTB Policy Guideline #16 states that an arbitrator may award nominal damages where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

For the above reason I award nominal damages in the amount of $25.00 for each verified week, from February 10, 2017 to March 03, 2017, that the tenants did not have use of the laundry facilities, for a total monetary award in the amount of $75.00.

I find that heating facilities or services are defined as facilities or services under the *Act.* I further find that section 33 of the *Act* defines the primary heating system as an emergency repair.

I find that, although there was more than one incident that the heating system failed, there is no evidence that the landlord did not respond in a reasonable timeframe for the majority of the times where the heat failed. I find there is only one confirmed prolonged period during February 2017 when the tenants were without heat for an unreasonable period of three days.

For the above reason I award nominal damages in the amount of $25.00 for each verified day that the tenants did not have heat, for a total monetary award in the amount of $75.00.

As the tenants have been partially successful in this application, I allow the tenants to recover half of the filing fee from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the tenants' favour in the amount of $200.00 which is for half of the filing fee at $50.00 and nominal damages in the amount of $150.00.

I dismiss the tenants' Application for a return of the security deposit, with leave to reapply.

I dismiss the remainder of the tenants' Application, 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: January 02, 2018

Residential Tenancy Branch