



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FF, LRE, O, OLC, RP, RR (Tenants' Application)
OPR, MND, MNR, MNSD, MNDC, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for dispute resolution they sought the following relief:

- an Order canceling a 1 Month notice to End Tenancy for Cause;
- compensation for rent paid pursuant to an illegal rent increase;
- an Order restricting the Landlord's right to enter the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, and the tenancy agreement;
- an order that the Landlord make repairs to the rental unit;
- an Order that the Landlord make emergency repairs to the rental unit;
- recovery of the filing fee; and
- other unspecified relief.

At the original date of the hearing the Tenant confirmed that she had vacated the rental unit such that her request to cancel the notice and any relief related to a continued tenancy were no longer applicable. As such, those requests are dismissed without leave to reapply.

In the Landlord's Application for Dispute Resolution she sought the following relief:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- a Monetary Order for:
 - unpaid rent;
 - damage to the rental unit
 - money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Regulations*, and the tenancy agreement;
- authority to retain the Tenants' security deposit; and,
- recovery of the filing fee.

The hearing was conducted by teleconference on December 6, 2017 and continued on February 26, 2018. Both parties called into the hearing on December 6, 2017 although only the Tenant and her witness, M.S., called in on February 26, 2018.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Landlord did not call into the adjourned hearing, I dismiss the Landlord's claims without leave to reapply.

By Interim Decision dated December 7, 2017, the parties were prohibited from submitting any further evidence. Despite this clear direction, the Landlord submitted two additional sets of evidence on February 13 and February 16. Pursuant to my Order of December 7, 2017, I declined to consider that evidence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* and my Interim Decision. However, not all details of the Tenant's 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. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant, K.B., testified that this tenancy began December 14, 2013. Monthly rent was payable in the amount of \$1,250.00 and was raised to \$1,350.00 at the end of the tenancy. A copy of the residential tenancy agreement was provided in evidence confirming this.

In the within hearing the Tenants sought monetary compensation in the amount of \$999.62 calculated as follows:

9 weeks compensation	\$2,803.85
Overpayment of rent pursuant to illegal rent increase	\$1,019.23
<i>Amount owing for rent</i>	<i>\$3,598.46</i>
Return of security deposit	\$675.00
Filing fee	\$100.00
TOTAL CLAIM	\$999.62

The Tenant submitted that the Landlord issued two illegal rent increases during the tenancy. She stated that the first increase was on March 14, 2016 when the Landlord increased the rent from \$1,350.00 to \$1,400.00. The Tenant stated that she did not receive written notice for the increase, nor was it increased appropriately, in terms of notice and the amount. The Tenant stated that she paid the illegal rent increase of \$50.00 per month from March 14, 2016 to February 2017 when the Landlord increased the rent again (less than a year later) to \$1,450.00. The Tenant sought the sum of \$1,019.23 representing rent paid over and above the amount provided for in the tenancy agreement.

The Tenants also claimed \$2,303.85 representing 9 weeks of rent for loss of services during the tenancy including the following:

The Tenant testified that in December of 2016 the washing machine wasn't working properly and as a result she wasn't able to do laundry for a period of five months. She stated that the washing machine would start and stop, would take 2-3 hours to complete a load as it started and stopped and required manual intervention to restart. She stated that she did approximately two loads of laundry a week and this was very disruptive and time consuming.

The Tenant further stated that for a period of time, from December 2016 to May 2017, they did not have mail services at the rental unit due to a break in at the mail room. As a result she was forced to drive 15-20 minutes each way to a post office to retrieve her mail. She also retrieved the Landlord's mail and delivered it to her.

The Tenant stated that for a she did not have mail service at all from May 17, 2017 to June 28, 2017. She stated that when the mailboxes were replaced, she was not provided with a key. When she attended the strata office she was informed that as she

wasn't an owner she could not obtain a key. The Tenant was then informed that the Landlord was prohibited from attending the strata office as she was accused of harassing the staff.

The Tenant stated that the interruption in her mail is particularly problematic as she receives a child care subsidy and they only communicate with her via mail only. As well, at one point in time she was asked for supporting documentation from the child care subsidy office, and as she did not receive the letters from their office her child care subsidy payments were impacted, and she had to take a day off to deal with this.

The Tenant further stated that he son has a chromosomal abnormality and as such he goes to a specialized centre which is \$760.00 per month, which was fully subsidized. She stated that she was very stressed as she knew that she could not afford to pay this and worried that if they cut her off she would receive a bill she could not pay.

The Tenants also claimed three weeks in compensation claiming they were not able to enjoy the rental unit, from September 4, 2017 until September 16, 2017 due to the Landlord's behaviour. She stated that the Landlord and her real estate agent, V.L., met with the Tenant on September 4, 2017, as they wanted to list the rental property for sale and wanted the Tenant to move out by November 30, 2017. The Tenant stated that they discussed a mutual agreement to end the tenancy, then the Landlord then refused to sign the agreement. The Tenant stated that the meeting took several hours and the Landlord and her agent were speaking in a different language and also accusing her of not paying her rent.

The Tenant further stated that after the meeting, and on the same day, the Landlord came back to the house and accused the Tenant of being dishonest, and not paying her rent and being a bad person. The Tenant stated that this conversation occurred when they were trying to have dinner and in front of the Tenant's children, who are four and six years old respectively. She stated that she asked the Landlord to leave, and she would not leave for approximately one hour.

The Tenant stated that following that incident, the Landlord began emailing and texting her repeatedly. She then filed for dispute resolution because she felt that would be a better way of determining who owed what and to minimize any further conflict. She also asked the Landlord to communicate in writing and not to text due to the volume of texts the Landlord was sending.

The Tenant stated that after 9:00 p.m. on the night of September 11, 2017 she heard both doorbells ringing. She stated that both doorbells were being rang intermittently such that the one on the main floor would ring then the other, indicating there were two people ringing the doorbell or running from door to door.

She stated that the following date she came home early and saw the eviction notice which was dated September 11, 2017 such that she assumed it was the Landlord and/or her agent who were ringing the doorbell the night before.

The Tenant stated that on the 13th she came home from work and there was a blue van blocking the entrance to the garage. The Landlord came out of the car, recorded the Tenant's vehicle license, and then drove away.

The Tenant stated that on the 15th the Landlord followed the Tenant to the Tenant's daughter's school. She stated that the Landlord insisted on having the Tenant's address and knowing the name of her new Landlord.

On the 16th the Tenant filed her evidence at the residential tenancy branch and provided that information to the Landlord on the 17th when they were supposed to do the move out condition inspection. The Tenant stated that the Landlord was videotaping the Tenant and her ex-husband at the time. The Tenant stated that the Landlord also handed the Tenant some handwritten documentation as well as two notices of rent increase which the Tenant did not receive prior to that date. The Tenant alleged these were fraudulent documents.

The Tenant confirmed that on September 17 she informed the Landlord that her mail was forwarded through Canada post and that the Landlord could send the security deposit to the Tenant through the rental unit address but that she would not provide her physical forwarding address due to the Landlord's harassing behaviour. The Tenant stated that this was on the advice of the police whom she had called about the Landlord's behaviour.

The Tenant further stated that as they were leaving on the 17th the Landlord's husband started following them. The Tenant called the police again.

The Tenant's former husband, M.S., also testified. He stated that he moved out of the rental unit in 2016 although he is named on the tenancy agreement.

He confirmed that he was at the rental unit on September 12, 2017 to pick up some of his belongings which had been left at the rental after he moved out. He stated that while he was there he heard the doorbell ring and he went downstairs to answer the door. The Landlord handed him an eviction notice. He stated that they had already received an eviction notice. The Landlord asked the Tenant where he lived and asked for his phone number he refused to provide it to her. M.S. stated that the Landlord then stepped inside the door and refused to leave. M.S. then called the police who spoke to the Landlord.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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 their 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.

Section 32 of the *Act* mandates the Tenants' and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After consideration of the Tenants' undisputed testimony and evidence and on a balance of probabilities I find as follow.

I accept the Tenants' undisputed evidence that she was without a functioning washing machine for several months. I further accept that this was time consuming and disruptive to her schedule. By failing to repair the washing machine, the Landlord has breached section 32 of the *Act*.

I also accept the Tenant's evidence that her mail service was impacted for a significant period of time. I also accept her evidence that due to the Landlord's behaviour at the strata office, the Tenant was not able to retrieve a mail key, and therefore was unable to communicate effectively with the child care subsidy office who, in turn, restrict communication to mail. As the Tenant's child has increased care needs, the potential financial impact on the Tenant was understandably concerning.

I also accept the Tenant's evidence that her relationship with the Landlord significantly deteriorated near the end of her tenancy. I find that the harassing behaviour of the Landlord negatively impacted the Tenant's right to quiet enjoyment of the rental unit and therefore devalued her tenancy.

In all the circumstances I find the Tenant's request for the equivalent of nine weeks of rent to be reasonable. The tenancy began December 14, 2013 such that it was for nearly four years, or approximately 200 weeks. The Tenant's request represents 4% of the rent paid and I find, based on the issues described by the Tenant, this to be a reasonable sum to compensate her for the decrease in the value of her tenancy during the relevant time.

I also accept the Tenant's evidence that the Landlord raised her rent contrary to the *Residential Tenancy Act* and *Regulations*. A landlord may only increase rent in accordance with the *Act* and *Regulations* and as such I find the Tenants are entitled to return of the amounts paid pursuant to these illegal rent increases.

The Tenants acknowledge that rent is outstanding in the amount of \$3,598.46 and factored this amount into their calculation on the filed Monetary Orders Worksheet. I accept their undisputed testimony and submissions in this regard.

I also award the Tenants return of the security deposit.

Having been successful in her application, the Tenants are entitled to recovery of the \$100.00 filing fee.

Conclusion

The Tenants are entitled to monetary compensation in the amount of **\$999.62** calculated as follows:

9 weeks compensation	\$2,803.85
Overpayment of rent pursuant to illegal rent increase	\$1,019.23
<i>Amount owing for rent</i>	<i>\$3,598.46</i>
Return of security deposit	\$675.00
Filing fee	\$100.00
TOTAL AWARDED	\$999.62

The Tenants are granted a Monetary Order in the amount of **\$999.62**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Landlord's claim is dismissed.

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: March 2, 2018

Residential Tenancy Branch