



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NATIONAL CORPORATE COLOUR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

The landlord did not attend this hearing which lasted approximately 30 minutes. The tenant attended and was given a full opportunity to opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that they had served the landlords with the application for dispute resolution dated October 31, 2017 and their evidentiary materials by registered mail sent on November 3, 2017. The tenant provided two Canada Post tracking numbers as evidence in support of service. Based on the documentary evidence and the undisputed testimony of the tenant I find that the landlords were deemed served with the application for dispute resolution and evidence in accordance with sections 88, 89 and 90 of the *Act* on November 8, 2017, five days after mailing.

At the outset of the hearing, the tenant made an application to amend the amount of their monetary claim. The tenant testified that they had provided an estimate when filing their application but a more accurate figure was calculated in their monetary order worksheet. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as providing an accurate calculation is reasonably foreseeable, I amend the tenant's application to increase the monetary claim from \$20,000.00 to \$24,536.14.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The tenant provided undisputed evidence regarding the following facts. This tenancy began in 2013 and ended on November 1, 2015. The monthly rent at the end of the tenancy was \$1,643.75 payable on the first of each month.

The tenancy ended by way of the landlord's 2 Month Notice to End Tenancy for Landlord's Use dated August 3, 2015 (the "2 Month Notice"). The 2 Month Notice provides that the reason it was issued as, the Landlord or the landlord's spouse or close family member will occupy the rental unit.

The tenant seeks a monetary award in the amount of \$24,536.14 for the following items:

Item	Amount
Rent Increase	\$2,611.50
BC Hydro	\$1,146.06
Moving Costs	\$1,228.50
Pizza for Movers	\$51.90
Steam Clean	\$54.63
Rent	\$3,287.50
DLink Camera	\$156.05
Quiet Enjoyment Violations	\$16,000.00
Total	\$24,536.14

The tenant submits that they had the tenancy not ended they would not have had to vacate the rental unit, incurring costs for moving as well as paying a higher rent and BC Hydro fees that they are being charged under a new tenancy agreement. The tenant also seeks the cost of steam cleaning the carpets of the rental unit at the end of the tenancy.

The tenant further submits that the landlord did not use the rental unit for the purposes stated on the 2 Month Notice. The tenant said that neither the landlord nor any family member of the landlord moved into the rental unit after the tenancy ended. The tenant testified that she visited the rental building several weeks after the tenancy and found a new occupant who stated they are unrelated to the landlord. The tenant also submitted correspondence from the landlord stating his agent was inspecting the rental unit and photographs of the property being put up for sale.

The tenant testified that this tenancy was characterized by bullying, lying and intimidation tactics on the part of the landlord. The tenant submitted into written evidence a timeline of some events during the tenancy, photographs of the condition of the rental unit and correspondence with the landlord. The tenant said that on one specific occasion the landlord entered the rental unit without the tenant's authorization or prior notice and as a result the tenant purchased a DLink Camera to record the landlord's illicit behaviour. The tenant characterized the tenancy as stressful and an unpleasant period in her life and seeks a monetary award for loss of quiet enjoyment.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 51(2) of the *Act* states if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the landlord or a close family member will occupy the rental unit. The tenant testified that when they visited the rental unit after the tenancy had ended the suite was occupied by someone who stated they are unrelated to the landlord. Furthermore, the tenant submitted into evidence photographs showing the rental building being listed for sale.

I find, based on the undisputed evidence of the tenant, that the landlord did not use the rental unit for the purposes stated on the 2 Month Notice. Consequently, I find that the tenant is entitled to a monetary award of \$3,287.50, double the amount of the monthly rent.

While the tenant seeks to recover the costs associated with the tenancy ending and having to move to a new tenancy on the basis of the 2 Month Notice, I find that these are not costs recoverable under the Act. I find that these are simply the costs incurred as the tenancy ended by way of the 2 Month Notice. While I find that the landlord did not use the rental unit for the purposes stated on the notice that does not give rise to a right to recover all of the costs for ending the tenancy, cleaning the rental unit, moving or paying rent in a new rental unit. Consequently, I dismiss this portion of the tenant's application.

I find that there is insufficient evidence in support of the tenant's claim for a DLink Camera. I find that there is little independent evidence in support of the tenant's testimony that the landlord entered the rental unit without authorization. Even if I were to accept the tenant's testimony that she had concerns about the landlord's conduct I do not find that the purchase of a camera is a direct and reasonable cost that emerges. Under the circumstances, I do not find the purchase of a camera or recording instruments to be a reasonable cost that results from a party violating the Act, regulations or tenancy agreement. I therefore, dismiss this portion of the tenant's claim.

I find that there is insufficient evidence in support of the tenant's claim for loss of quiet enjoyment for this tenancy. I find that the photographs, written submissions and testimony of the tenant do not cumulatively show on a balance of probabilities that there has been a substantial interference with the ordinary enjoyment of the premises so as to trigger a basis for a monetary award. While it is evident from the tenant's written submission and testimony that they felt this tenancy was less than ideal and experienced discomfort I find that it is insufficient to establish a claim for loss of quiet enjoyment. Consequently, I dismiss this portion of the tenant's claim.

Conclusion

I issue a monetary award in the amount of \$3,287.50 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the tenant's application is dismissed 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: June 4, 2018

Residential Tenancy Branch