



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Lepage Parksville Qualicum Beach Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Have the Tenants’ claims already been dealt with in a previous Decision?

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on July 1, 2015 with rent of \$1,400.00 payable on the first day of each month. The Parties ended the tenancy by mutual agreement and the Tenant paid rent to February 15, 2017. The Landlord removed the Tenants’ property from the unit on February 14, 2017. In a previous application made September 14, 2017 the Tenant claimed, inter alia, compensation for the loss of occupation of the unit for February 14 and 15, 2017. The Landlord also made an application on October 26, 2017 claiming, inter alia, cleaning costs. The two applications were joined for the hearing that resulted in a Decision dated January 17, 2018.

The Tenant states that he never received a copy of the previous Decision and had not followed up with the Residential Tenancy Branch (the "RTB") to obtain a copy. The Tenant was given an opportunity to seek an adjournment of this hearing in order to obtain a copy and the Tenant declined. The Tenant was informed that in the previous Decision the Landlord's claim for cleaning costs was dismissed on the basis that the Landlord prevented the Tenants from cleaning the unit themselves by taking possession of the unit before February 15, 2017 and that the Tenants were found entitled to the recovery of the two days rent claimed. The security deposit was dealt with in the previous Decision.

The Tenant states that the arrogant actions of the Landlord to remove the personal property of the Tenants and to place them outside the unit on February 14, 2018 before the end of the tenancy resulted in personal and professional embarrassment as the Tenant's wife is a medical doctor and the neighbours were her patients. The Tenant claims \$700.00 in compensation and states that this figure was not based on anything other than half the monthly rent.

The Landlord states that the Tenant gave evidence of this embarrassment for the Landlord's actions at the previous hearing and argues that this matter has therefore been dealt with and that the Tenant no longer has this claim. The Landlord states that the items were minor, mostly boxes, both covered and uncovered and included cleaning supplies, prescription pads and other papers with the Tenant's letter head. The Landlord states that the items were placed under a covered patio in the back years that was heavily landscaped and treed and could only possibly be seen by one neighbour at the back. The Landlord states that the items were only outside for an hour before the Tenant collected them and that the Landlord kept them in full view through the kitchen window for that period of time. The Landlord states that the heavy items such as the TV and microwave were left inside the unit. The Tenant states that the Landlord's evidence of keeping the items secured is deceptive as when the Tenant arrived at the unit the

front door was open with the television at the door in full view and the Landlord was upstairs at the time.

The Tenant states that at the onset of the tenancy the Landlord and Tenant LR conducted a move-in inspection with an inspection report completed and copied to the Tenants. The Tenant states that the Landlord was in a hurry to complete the inspection and as a result additional unclean areas were discovered by the other Tenant after the inspection. The Tenant states that two emails dated June 27 and August 23, 2015 were sent to the Landlord setting out the following additional unclean areas in the house: fridge, light fixtures, stove fan, entrance door, windows, sliding glass door and garage. The Tenant states the Landlord agreed to add the email to the move-in inspection report and to have the unit cleaned. The Tenants state that the Landlord also agreed to seek permission from the owner to paint the garage. The Tenant states that this was never done so the Tenants cleaned the remaining items and power washed the garaged. The Tenants claims \$327.50 and \$70.00 for the costs to clean the unit and garage.

The Landlord states that although she agreed to have the unit cleaned as requested the Tenants told her over the phone at some point in the year not to worry and that they would take care of it themselves. The Landlord argues that the Tenants are now not entitled to the costs claimed because they withdrew their request. The Tenant denies that the Landlord was relieved of the promise to complete the cleaning and states that all of his conversations are followed up and confirmed in writing. The Tenant states that no such call was made.

The Tenant withdraws the claim for \$1,400.00.

Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the

effect of the first decision or determination of the matter. Although the Tenant may have given evidence of embarrassment by the Landlord's actions at the previous hearing, as the previous Decision only dealt with damages for rent following the Landlords removal of the Tenants personal belongings , I find that the matter of compensation for a different head of damages from this action is not subject to res judicata.

Section 28 of the Acct provides that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. There is no right under the Act for the Landlord to remove a tenant's personal belongings to the exterior of a unit while a tenancy is ongoing. As the Landlord removed the Tenant's personal belongings without right before the end of the tenancy and placed them outside the unit in view of at least one neighbor I find that the Landlord breached the Tenant's right to privacy. Given that the only evidence of damages from this breach of privacy is personal embarrassment and considering that there is no supported evidence of professional embarrassment, I find that the Tenant has only substantiated a nominal amount of **\$100.00** for the Landlord's breach.

Given the Tenant's supported evidence that the unit was not clean at move-in and that the Landlord agreed to complete the cleaning I find that the Tenants were entitled to have the unit cleaned after move-in as part of the tenancy agreement. As the Landlord has not provided any supporting evidence of the Tenants' subsequent withdrawal of their request and given the Tenant's compelling evidence of always putting communications in writing, I find that the Tenant's did not relieve the Landlord of its obligation to clean the unit. Allow the Landlord's evidence was that the garage may be painted I find that this evidence also supports that the garage was not in a reasonably clean state and that the Tenant's mitigated their loss by washing the garage themselves. Given the invoices I find that the Tenants substantiated the costs claimed of **\$327.50** and **\$70.00**.

As the Tenant's claims have had some success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$597.50**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$597.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 12, 2018

Residential Tenancy Branch