



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 753629 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S FFT MNDCT MNSD

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary award for damages or loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67;
- Recovery of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent.

As both parties were present service of all documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as sought?
Is either party entitled to the security deposit for this tenancy?
Is either party entitled to recover the filing fee from the other?

Background and Evidence

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

This tenancy began in January 2017 and ended in December 2018. The tenant vacated the rental unit on December 21, 2018. A security deposit of \$1,000.00 was paid at the start of the tenancy and is still held by the landlord. The monthly rent was approximately \$2,000.00 payable on the first of each month.

The parties participated in a move-in and move-out inspection. The tenant testified that they were never provided with a copy of the move-in inspection report and that they were only presented with the final page of the move-out inspection report to sign. The tenant says that they did not agree to any deductions being made from the security deposit. Copies of the condition inspection report were submitted into evidence.

The parties agree that the rental unit contains a gas fireplace in the main living room. The living room also contains baseboard heaters. The tenant testified that the baseboard heaters did not provide sufficient heating and the fireplace was the primary source of temperature control in the living room. The parties agree that the tenant used the fireplace frequently during the winter months.

The parties testified that the tenant notified the landlord on November 11, 2018 that the fireplace was making noises while operating. The landlord said they arranged for a service technician, but one was not available until December 11, 2018. The tenant gave evidence that the fireplace continued to be used despite the noises until it broke down completely on November 24, 2018. The fireplace was not repaired for the remainder of the tenancy, when the tenant vacated on December 21, 2018.

The tenant seeks a monetary award of \$500.00 for the loss of value of tenancy and loss of quiet enjoyment due to the lack of a functioning fireplace in the living room. The

tenant said that they were unable to have guests over or work from home due to the lack of heating.

The landlord seeks a monetary award of \$2,580.71 for damages and loss. The landlord submits that the rental suite required repairs and cleaning due to the tenancy. The landlord said that the fireplace repairs cost \$939.75 and the technician advised that the cause of the malfunction was overuse of the fireplace. The landlord submits that the tenant caused the fireplace to break down by using it excessively.

The parties agree that there were some areas of the rental suite that required repairs and work to be done. The tenant testified that the glass stovetop was broken, and that two areas of the wall in the suite required re-painting. The tenant testified that they agree that the damage was caused by the tenant but disagree with the landlord's assessment of the cost for repairs and maintenance.

The landlord submitted an invoice for \$823.71 for the cost of re-painting, cleaning and general work undertaken by the landlord. A copy of the invoice was submitted into evidence. The landlord testified that they requested some quotes and believe that the cost for replacing the broken glass of the stovetop is \$817.25.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

In the matter at hand the tenancy ended on December 21, 2018 when the tenant vacated the rental unit. While the landlord submits that the term of the periodic tenancy provides that the tenancy would not end until December 31, 2018, in accordance with section 44(1)(c) I find that the tenancy ended on the date that the tenant vacated the suite.

I find that the tenant provided a forwarding address in writing in the original tenancy agreement signed at the commencement of the tenancy in 2017. The tenant provided

their “post termination notice address” on the original agreement and confirmed at the hearing that the address provided is their forwarding address.

Accordingly, I find that the landlord had 15 days from December 21, 2018 to either return the security deposit in full or file an application for dispute resolution to retain the deposit. The landlord filed their application on January 10, 2019, outside of the 15 days provided under section 38 of the Act.

I accept the tenant’s evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord’s failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to a \$2,000.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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. 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 of the *Act* 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. In conjunction with section 65 (1)(f) of the *Act* this section allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the Residential Tenancy Act speaks to a tenant’s right to quiet enjoyment, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further section 7 of the Residential Tenancy Act states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The parties agree that the fireplace in the rental suite was not functioning from November 24, 2018 to the date the tenancy ended on December 21, 2018. The tenant seeks a monetary award for the loss of the amenity. The tenant gave evidence that the fireplace was the primary source of heat for the room. While the suite contained baseboard heaters the tenant testified that they were inadequate to keep the suite comfortable. The tenant suggests a monetary award of \$500.00 for the loss of the fireplace and the impact it had on their tenancy.

While I find that the loss of the fireplace had some impact on the tenancy, I find that there is insufficient evidence to support the full amount of the tenant's monetary claim. I find there is insufficient evidence that the loss of the fireplace had any measurable impact on the tenant's routine or activities. While the tenant submits that they were unable to use the room or entertain guests, I find there is insufficient evidence that the loss of the fireplace caused them to curtail activities.

Furthermore, the parties agree that the suite contained baseboard heaters. While the tenant testified that they were inadequate to sufficiently heat the room, I do not find their submission to be persuasive. I find the landlord's testimony that the gas fireplace provides some heat but are not meant to be the sole source of heating to be more reasonable. In a modern building with baseboard heaters it is reasonable to expect that a fireplace is a cosmetic amenity and not intended to be the sole source of controlling the temperature in the room.

While I accept the evidence of the parties that the fireplace was not functioning for the final weeks of this tenancy, I find that there is insufficient evidence that the loss of its use had a palpable effect on the tenant's right to quiet enjoyment or greatly reduced the

value of this tenancy. Under the circumstances I find that a nominal monetary award of \$80.00, the equivalent of approximately 4% of the monthly rent to be appropriate.

The landlord seeks a monetary award of \$2,580.71 for the cost of repairs and cleaning they say were required at the end of the tenancy. The landlord submits that the repairs include fixing the fireplace, fixing the glass stovetop and cleaning and painting the rental suite.

The tenant testified that they agree that there was damage to the stovetop, to the walls of the dining room and the walls of the master bedroom. The tenant disputes that they are responsible for the damage to the fireplace.

While the landlord submits that they are informed by third party technicians that the damage to the fireplace was a result of overuse, I find there is insufficient evidence that the tenant breached the Act, regulations or tenancy agreement by their use of the fireplace. The fireplace is an amenity within the rental unit and the tenant was free to utilize it as they wished. While it may have ultimately broken down due to its usage I do not find that the tenant breached the agreement or acted in a negligent manner. In the absence of specific direction restricting their right to use their fireplace I find that there was no breach by the tenant which would give rise to the landlord's right to claim for the cost of repairs. Consequently, I dismiss this portion of the application.

I find that the invoice submitted into documentary evidence by the landlord for the cost of cleaning and painting in the amount of \$823.71 to be reasonable. The parties submitted photographs of the suite showing the condition at the end of the tenancy. It is evident that some re-painting is required as well as some cleaning. I find that the invoice issued by the landlord provides a detailed description of the work conducted, provides a reasonable number of hours undertaken for the work described and charges a reasonable fee for labour and supplies. Accordingly, I issue a monetary award in the landlord's favour for the amount provided on the invoice of \$823.71.

I accept the landlord's evidence that the estimate obtained for repair of the glass stovetop is \$817.25. The tenant testified that they agree that there is damage to the stovetop. While the tenant disagrees with the figure submitted by the landlord, I find that the landlord has provided sufficient evidence through the photographs of the damage and their testimony regarding quotes obtained from third party service providers. I accept that the figure submitted by the landlord is an accurate estimate of the cost for repairing and replacing the broken glass stovetop. Accordingly, I issue a monetary award in the landlord's favour for that amount.

As both parties were successful in part for their respective applications, I find it appropriate that both parties bear their own costs for filing.

Conclusion

I issue a monetary Order in the tenant's favour for \$439.04 under the following terms:

| Item | Amount |
|---|-----------------|
| Return of Double Security Deposit as per section 38 of the Act ($\$1,000.00 \times 2 = \$2,000.00$) | \$2,000.00 |
| Loss of Value of Tenancy and Quiet Enjoyment | \$80.00 |
| Less Monetary Award for Landlord for Damages and Loss | -\$1,640.96 |
| Total Monetary Order | \$439.04 |

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 24, 2019

Residential Tenancy Branch