



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, LRE, MNDCT, FFT

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, for an order for the landlord to provide services or facilities agreed upon but not provided, an order suspending or setting conditions on the landlord's right to enter the rental unit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The listed tenants, their agent and witnesses, the landlord and her witness attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. I note that the tenant's agent, MS, and the tenant's daughter were formerly living in the rental unit as tenants, but had since vacated. The tenant's agent provided the testimony for the tenant during the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The landlord confirmed that her evidence was submitted just 6 days prior to the hearing. While this was late submission of evidence, I admitted the evidence for consideration at the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I

consider and refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The tenant filed her application on May 2, 2019, and the tenant vacated the rental unit on May 8, 2019. As the tenancy has now concluded, I have determined that the portion of the tenant's application for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, for an order for the landlord to provide services or facilities agreed upon but not provided, and an order suspending or setting conditions on the landlord's right to enter the rental unit was now moot.

I therefore proceeded only on the tenant's monetary claim.

Additionally, the landlord has made her own application for dispute resolution for monetary compensation; however, that application is scheduled for a separate hearing before another arbitrator. The parties were informed that the evidence used for this hearing does not transfer to the file on the landlord's application. Therefore, the parties were cautioned that any evidence they intended to rely upon would need to be submitted separately for the hearing on the landlord's application.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation, an order requiring the landlord to comply with the Act, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on March 15, 2019, ended on May 8, 2019, when the tenant vacated the rental unit, that monthly rent was \$2,400.00, and that tenant paid a security deposit of \$1,200.00. A written tenancy agreement was provided into evidence.

The security deposit has not been returned to the tenant; however, the landlord did file her own application claiming against the tenant's security deposit.

The tenant's monetary claim as shown on their amended monetary order work sheet was as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Written exchange (1 st month's rent)	\$1,200.00
2. 2 nd month's rent	\$2,400.00
3. Security Deposit	\$1,200.00
4. Internet Bill	\$232.05
5. Electricity Bill	\$451.56
6. Moving expenses to home	\$700.00
7. Moving expenses from home	\$1,030.00
8. Transportation expenses (fuel)	\$400.00
TOTAL	\$7,613.00

Items 1 and 2-

This claim is for a return of the rent paid for March and April 2019.

In support of her application, the tenant's agent ("agent"), submitted that the tenant never enjoyed the full use of the rental unit during the entire tenancy, as the landlord was in the process of having major electrical upgrades being performed on the rental unit. In addition, there were other construction projects on-going which caused a disruption to the tenant's right to quiet enjoyment. The agent submitted that these on-going repairs and construction led the tenant to end her tenancy.

The agent submitted that the kitchen sink repair was faulty and that the tenant was without the sink from March 27 to April 6th or 7th.

The agent referred to the photographic evidence to show that the contractors left their construction material in the rental unit, which required the tenant to have to move around.

The agent submitted that there were no outlets in the bathroom.

The agent submitted that the landlord entered the rental unit without notice and whenever she wanted to come in, having no regard to the tenants' privacy.

The tenant also submitted that the kitchen sink was unusable for a portion of the tenancy and was not repaired in a timely manner.

The tenant's relevant evidence included, but was not limited to, photographs of the construction material left at the rental unit, showing no outlets in the bathroom, the state of the tenant's personal property in the rental unit while construction was ongoing, written notices from the landlord regarding access to the rental unit, and receipts for expenses claimed.

Landlord's response-

The landlord submitted that the tenants knew from the start of the tenancy that there would be a BC Hydro upgrade to the rental unit. The landlord stated that she was not serious about renting the rental unit until May 2019, as that was to be the end of the electrical upgrade.

The landlord submitted that she informed the tenants she did not know how long the project would take, which was to upgrade the meter.

The landlord submitted that she told the tenants that there was "going to be a big mess" and that they were "going to upgrade the panels", which was the reason the rental unit would not be ready until May 2019.

The landlord submitted that the renovations did not start in March and that she did not allow the contractor to make more holes than necessary during the construction project. The landlord submitted further that any time she accessed the rental unit, she had permission.

The landlord said that the tenants knew about electrical upgrade, as it was mentioned on the move-in condition inspection report ("CIR"), which was submitted into evidence by the landlord. The CIR shows March 8, 2019, as the date of the move-in inspection, and the 3rd page of the report lists "BC Hydro upgrade" as a repair at the start of the tenancy.

The landlord said that the construction was no more than 14 days in total.

The landlord's additional relevant evidence included, but was not limited to, written testimony and rebuttal pages from the landlord and other parties familiar with the matters in this dispute.

In the landlord's evidence, a written statement of June 5, 2019, labeled "Written Witness testimony", the landlord stated that she provided the tenant a notice of entry on April 23, 2019, by text message and phone conversation, that she and her electrician would enter the rental unit on April 25, 2019. The tenant was being aggressive, according to the landlord, and would not let the landlord enter, which prompted a call to the police.

Another written statement from the landlord explained the matter surrounding the kitchen sink, confirming that the repairman did not show up as scheduled. Further the landlord wrote that the tenant let the repairman in later on, without the landlord being present. The landlord also wrote she asked the tenant if she could bring her own mother in for measurements.

Another written statement from the landlord said that the tenant contacted BC Hydro in regards to a construction approval and that she then agreed to have the electrical work done. The landlord further said the electrician would require access on April 11, 2019, that it was unknown how long the work would take, but perhaps 3 to 4 days if no problems arose. The landlord also said that they would need to shut off the heaters for 3-4 days. The landlord confirmed that the internet cables were cut, but that after three days, the cable company gave a temporary connection.

In another written statement, the landlord said that the tenant came to her after two weeks of living in the rental unit and said that it was not fair to share the electrical bills with the lower suite tenants as she never turns on the heat. The landlord wrote that this conversation prompted her to agree to separate the electrical panels between the upper and lower suites.

Security Deposit-

The tenant requested the return of her security deposit of \$1,200.00 that was paid at the beginning of the tenancy.

The landlord has submitted that she filed an application for dispute resolution claiming against the tenant's security deposit.

Internet and electrical bills-

The agent submitted that the tenant is entitled to compensation on this issue as they were without power for multiple days throughout the tenancy while work was ongoing.

Additionally, the cables were cut, causing the tenants to lose the internet during the tenancy.

In response, the landlord submitted that the tenants only lost power for 2 days and the internet cable for 3 days. The landlord pointed out that the tenants had power during the night.

Moving expenses-

The agent submitted that they would never have spent that much money moving in and out so quickly, if they knew about the construction project.

In response, the landlord said they would have had to deal with the construction project for only a month.

Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenant has the burden of proof to substantiate her claim on a balance of probabilities.

Items 1 and 2, return of the rent paid for March and April 2019-

Section 32 of the Act requires a landlord to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation; section 33 requires that a landlord make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and

exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act.

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

On the basis of the tenant's clear and consistent oral, written, and photographic evidence and the landlord's inconsistent evidence, I find that the tenant was not provided a rental unit that complied with health, safety and housing standards and made it suitable for occupation.

In determining that the landlord's evidence was inconsistent, I was influenced by the contradictions in her evidence. At the hearing, the landlord said that the tenants knew from the beginning that there was going to be an electrical upgrade by BC Hydro, which required her electrician to enter the rental unit to provide the interior construction work. The landlord further said that she was not serious about renting until May 2019 when the upgrade would be finished, which I find is confirmation that she was aware she should not have allowed a tenancy to start.

In her written evidence, the landlord submitted several times that the tenant was the one asking for the upgrade and separation of the panels, which contradicted her testimony that the tenant knew about the planned electrical upgrade.

As the landlord herself admitted that the rental unit should not be rented out until May 2019, when the upgrade would be finished, and that there would be a "big mess", I find the undisputed evidence is that the tenant did suffer a loss of use of the rental unit and a subsequent devaluation for portions of the tenancy during the times of construction and repair, beginning in March 2019.

I also find the undisputed evidence is that the tenant received multiple notices to enter the rental unit during the construction period for consecutive full days. I also find the evidence does not support that the landlord provided written notices of entry on each occasion. All of this leads me to conclude that the value of the tenancy was further reduced and that the tenant's quiet enjoyment of the rental unit was disrupted.

Residential Tenancy Policy Guideline #16 reads, with which I concur reads, in part:

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- ☐ loss of access to any part of the residential property provided under a tenancy agreement;
- ☐ loss of a service or facility provided under a tenancy agreement;
- ☐ loss of quiet enjoyment (see Policy Guideline 6);
- ☐ loss of rental income that was to be received under a tenancy agreement and costs associated; and
- ☐ damage to a person, including both physical and mental.

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- ☐ a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement
- ☐ loss or damage has resulted from this non-compliance;
- ☐ the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- ☐ the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy.

In this case, I find that the landlord's failure to provide a rental unit which was set to undergo a major electrical upgrade reduced the value of this tenancy by 40%. I have not granted the tenant's request for a full devaluation of the tenancy as the tenant enjoyed several benefits of the tenancy, including a space to occupy, a shower, a living room, bedrooms, and kitchen facilities.

In acknowledgment of the tenant's loss of quiet enjoyment due to the multiple entries by the landlord and her contractor, I find it reasonable to grant the tenant compensation of 10%.

Due to the above, I therefore grant the tenant compensation of \$600.00, which is 50% of the rent paid for March 2019, and \$1,200.00 which is 50% of the rent paid for April 2019, for a total monetary award of \$1,800.00.

Tenant's security deposit-

At the time of the hearing, this issue was premature for consideration as the tenant provided her written forwarding address on May 14, 2019, at the move-out inspection, and the landlord filed an application claiming against the security deposit on May 21, 2019. The matter of the tenant's security deposit will be dealt with in the landlord's application.

Internet and electrical bills-

On the basis of the undisputed evidence, I find that the tenant did suffer an interruption of utilities during the construction period. While I find that the tenant should be compensated for disruption in the services, I could not determine from the evidence submitted the exact amount of loss was proven.

I find it reasonable to award the tenant a nominal amount in recognition of the loss of services, in the amount of \$50.00 for the internet and \$150.00 for electrical service. I grant the tenant a total monetary award of \$200.00 for loss of utility service.

Claim for moving-

As to the tenant's claim for moving expenses, these are choices the tenant made in beginning and ending a tenancy, on how to facilitate her moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I also find the tenant was not required to move out by operation of the Act.

I therefore dismiss her claim for \$700.00 for moving into the rental unit, \$1,030.00 for moving out of the rental unit, and \$400.00 for fuel expenses.

As I find merit with the tenant's application, I also award the tenant recovery of her filing fee of \$100.00.

Due to the above, I find the tenant is entitled to a total monetary award of \$2,100.00, comprised of \$600.00 for 50% of the rent paid for March 2019, \$1,200.00 for 50% of the

rent paid for April 2019, \$50.00 for loss of the internet, \$150.00 for loss of electrical services, and \$100.00 for recovery of the filing fee paid for this application.

I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of her monetary award of \$2,100.00.

Should the landlord fail to pay the tenant this amount without delay, the order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court if it becomes necessary. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application was partially successful and she has been granted a monetary award of \$2,100.00.

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: July 8, 2019

Residential Tenancy Branch