



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT OLC PSF RP RR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on August 23, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- a monetary order for damage or compensation;
- an order that the Landlords comply with the Act;
- an order for regular repairs;
- an order granting a rent reduction; and
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenants testified that they served their Application to the Landlords by registered mail on September 3, 2019. The Tenants stated that they served their documentary evidence to the Landlords by registered mail on October 4, 2019. The Landlords confirmed receipt of the Application package, however, stated that they did not yet received the Tenants' documentary evidence. The Tenants provided the Canada Post tracking information in support. As such, Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlords testified that they served the Tenants with their documentary evidence by registered mail October 11, 2019. The Tenants stated that they did not receive the mailing. The Landlords stated that they sent their documentary evidence to the address provided on the Tenants Application package. The Tenants stated that they have since changed their address, however, this was not reflected in the Tenants' Application package. Pursuant to section 88 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Landlords' documentary evidence on October 16, 2019, the fifth day after the registered mailing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, the parties confirmed that the Tenancy had ended on September 2, 2019. As such, the Tenants' claims for; an order to provide services or facilities required by tenancy agreement or law, an order that the Landlord comply with the Act, an order for regular repairs and an order granting a rent reduction are now moot and are therefore dismissed without leave to reapply.

As such, the hearing continued based on the Tenants' Application for a monetary order for damage or compensation.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the Act?
2. Are the Tenants entitled to an order granting the return of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2018. During the Tenancy, the Tenants were required to pay rent in the amount of \$1,950.00 which was due to be paid to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$975.00. The Tenancy ended on September 2, 2019.

The Tenants set out their claims on a monetary worksheet which was submitted in the Tenants' Application. During the hearing, the Tenants requested to amend their Application to reduce portions of their monetary claims to exclude claims for the month of September 2019 as the tenancy had ended sooner than anticipated. The Tenants are seeking the following;

The Tenants are claiming \$319.75 in relation to cable and internet services which had been included in the rent, but that the Tenants were required to pay in addition to the rent. The Tenants stated that the rental unit was advertised as having free cable and high-speed internet. The Tenants stated that they were not satisfied with the cable and

internet services, therefore, upgraded the services and are now seeking the additional costs in the amount of \$319.75. The Tenants provided copies of their bills in support.

The Tenants stated that during the last month of their tenancy, their cable and internet services were disconnected. The Tenants stated that they suspect the Landlords had something to do with the disconnection, therefore, are seeking \$190.34 as they went without these services.

In response, the Landlords stated that they paid a credit to the cable and internet account which covered the costs of basic cable and internet. The Landlords stated that the Tenants decided to upgrade their services, which was above what was included in the rent. As such, the Landlords do not feel it is their responsibility to cover the additional costs. The Landlords stated that the cable and internet services were disconnected by the cable company as a result of the Tenants not paying their bill. The Landlord provided a notice indicating that the Tenants' account had been in arrears.

The Tenants are claiming \$418.00 in relation to having to do their laundry at the laundromat as the washing machine in the rental unit was not working properly during the tenancy. The Tenants stated that the drain cycle would start prior to the clean cycle commencing, as well as the washing machine would only clean using warm water. The Tenants stated that they notified the Landlords about the issues on May 22, 2018 and again on March 5, 2019. The Tenants stated that the Landlords attempted to repair the issues with the washing machine, however, this was not effective as the issues persisted.

The Tenants are claiming \$800.00 which represents \$100.00 per month from January 2019 until the end of their tenancy, in the relation to not having the use of their washing machine. The Tenants are claiming \$620.00 to compensate them for 31 hours they spent attending the laundromat in order to do their laundry as a result of the washing machine not working at the rental unit throughout their tenancy.

The Tenants are claiming \$120.00 as a result of having a fridge that leaked for over 13 months. The Tenants stated that they notified the Landlords on several occasions about the fridge leak, however, the Landlords did not fix the problem. The Tenants provided a copy of their requests to the Landlords as well as pictures and a video of the fridge leaking.

In response, the Landlords stated that the laundry machine and fridge worked fine throughout the tenancy and that he acquired an inspection report dated July 29, 2019 which further illustrated that the appliances in the rental unit were inspected and that there were no issues reported.

The Tenants are seeking compensation in the amount of \$3,000.00, which represents a credit of \$200.00 per month throughout the course of the tenancy. The Tenants stated that prior to entering the tenancy, they had viewed the rental unit which was advertised

as a 1000 sq. ft. unit. The Tenants stated that once they moved into the rental unit, they came to notice that the rental unit was only 844 sq. ft. and therefore feel as though they lost some value in their tenancy.

In response, the Landlords stated that the Tenants did not include the 192 sq. ft deck in their calculations which is also included in the rent, making the rental unit larger than advertised.

The Tenants stated that they had experienced a temporary loss of use of the elevator in the building, as well as there were issues with the hot water tank which required replacement. The Tenants are seeking compensation in the amount of \$200.00 as a result. The Tenants stated that the pool was closed for 10 days in April 2019, therefore, the Tenants are seeking compensation in the amount of \$200.00. The Tenants stated that there was construction noise and road closures as a result of nearby construction from July 2018 to May 2019. The Tenants are seeking \$200.00 for loss of quiet enjoyment as a result.

The Tenants are claiming \$721.36 in relation to moving costs at the end of the tenancy. The parties agreed that the Landlords served the Tenants with a Two Month Notice to End Tenancy on July 31, 2019 with an effective date of September 30, 2019. The Tenants provided the Landlords with a 10 Day Notice to end their tenancy on August 23, 2019 stating that they would like to end the tenancy earlier than the effective date of the Two Month Notice, on September 2, 2019. The Landlords stated that they accepted the Tenants' Notice and do not feel as though they should have to pay for the Tenants' moving costs.

Lastly, the Tenants are seeking \$5000.00 for aggravated and punitive damages. The Tenants stated that the Landlords knew that the Tenants did not like moving and decided to list the home for sale and served them with a Notice to End Tenancy. The Tenants stated that they considered the rental unit their home and did not want to move. The Tenants stated that the Landlords did not address the issues with the broken appliances throughout the tenancy and cancelled their cable and internet. The Tenants stated that they were treated poorly throughout the tenancy by the Landlords.

Analysis

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are claiming \$319.75 in relation to cable and internet services which had been included in the rent, but that the Tenants were required to pay in addition to the rent. The parties agreed that the Landlord had paid a pro rated credit on the account which represented the cost of the basic cable and internet. I accept that the Tenants chose to upgrade the services at an additional cost. I find that it was the Tenants' choice to upgrade their services, therefore, I do not find that the Landlords should be responsible for these costs. As such, I dismiss the Tenants' claim without leave to reapply.

The Tenants stated that during the last month of their tenancy, their cable and internet services were disconnected. The Tenants stated that they suspect the Landlords had something to do with the disconnection and are seeking \$190.34. I find that the Tenants provided insufficient evidence to demonstrate that the Landlords cancelled the services. The Landlords provided sufficient evidence to demonstrate that the account had been in arrears which is more likely than not the reason why the account could have been disconnected. As such, I dismiss the Tenants claim without leave to reapply.

The Tenants are claiming \$418.00 in relation to having to do their laundry at the laundromat as the washing machine in the rental unit was not working properly during tenancy despite having notified the Landlord on several occasions. The Tenants are also claiming \$800.00 in the relation to not having the use of their washing machine. The Tenants are claiming \$620.00 to compensate them for 31 hours they spent attending the laundromat in order to do their laundry as a result of the washing machine not working at the rental unit throughout their tenancy.

In this case, I find the Tenants provided insufficient evidence to demonstrate that the washing machine was unusable throughout the tenancy. I find that the Tenants referred to a drain cycle taking place prior to the wash cycle as well as the temperature of the water not being able to be adjusted to other settings. I accept that the parties agreed that the Landlords took steps to have the washing machine repaired, however, the

Tenants stated that this did not resolve the problems. I find that the Landlords provided an inspection report which indicated that the appliances in the rental unit had been inspected, however, the report did not specify if a diagnostic inspection was completed. I accept that the Tenants were inconvenienced by the limited functions available, however, they did not demonstrate that they lost complete use of the washing machine.

According to the Residential Tenancy Branch Policy Guideline 16 (the "Policy Guideline") "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the Tenants have established an entitlement to a nominal monetary award in the amount of \$200.00 and dismiss the remaining portions of the Tenants claims relating to the loss of use of the washing machine, cost of the laundromat, and compensation for time spent at the laundromat without leave to reapply.

The Tenants are claiming \$120.00 as a result of having a fridge that leaked for over 13 months. The Tenants stated that they notified the Landlords on several occasions about the fridge leak, however, the Landlord did not fix the problem. The Tenants provided a copy of their requests to the Landlords as well as pictures and a video of the fridge leaking. In this case, I find the Tenants provided sufficient evidence to demonstrate that the fridge leaked. I find that the Landlords provided insufficient evidence to demonstrate that they took steps to repair the fridge. I find that the Tenants have established an entitlement to \$120.00 in relation to the leaking fridge.

The Tenants are seeking compensation in the amount of \$3,000.00 for loss of value in the tenancy. The Tenants stated that the Landlords had advertised the rental unit to be 1000 sq. however, the Tenants came to notice that the rental unit was only 844 sq. ft. The Landlords stated that the Tenants did not include the 192 sq. ft deck in their calculations which is also included in the rent, making the rental unit larger than advertised.

In this case, I find tat the Tenants provided insufficient evidence to demonstrate that the Landlords breached the Act, nor did they demonstrate a loss. I find it reasonable for the Landlords to have included the calculations of the deck when placing the ad for the rental unit. As such, I dismiss the Tenants claim without leave to reapply.

The Tenants are seeking \$200.00 for temporary loss of use of the elevator, \$200.00 for restricted use of hot water due to a malfunctioning hot water tank, \$200.00 for loss of use of the pool for 10 days, \$200.00 for loss of use of the roadway at times and loss of quiet enjoyment due to construction noise during the majority of the tenancy.

I accept that the rental unit is part of a larger strata building and find that the Tenants have provided insufficient evidence to demonstrate that the Landlords had any control over these issues. I find that it is reasonable to expect that items such as hot water

tanks, elevators, and pools will malfunction at times requiring repairs. I find that the Tenants provided insufficient evidence to demonstrate that the Landlords breached the Act as a result. Furthermore, I find that that the construction noise and road closures where not associated with the rental building. As such, I dismiss the Tenants' claims for loss of use and quiet enjoyments without leave to reapply.

The Tenants are claiming \$721.36 in relation to moving costs at the end of the tenancy. The parties agreed that the Landlords served the Tenants with a Two Month Notice to End Tenancy on July 31, 2019 with an effective date of September 30, 2019. I accept that the Tenants provided the Landlord with a 10 Day Notice to end their tenancy on August 23, 2019 stating that they would like to end the tenancy on September 2 ,2019.

I find that the Landlords are permitted under the Act to serve a Notice to End Tenancy in good faith. I find that the Tenants did not dispute the Notice, but instead decided to end the tenancy earlier than the effective date of the Notice. As such, I find that the Tenants are not entitled to the return of their moving costs and dismiss their claim without leave to reapply.

Lastly, the Tenants are seeking \$5000.00 for aggravated and punitive damages. The Tenants stated that the Landlords knew that the Tenants did not like moving and decided to list the home for sale and served them with a Notice to End Tenancy. The Tenants stated that they considered the rental unit their forever home and did not want to move. The Tenants stated that the Landlords did not address the issues with the broken appliances throughout the tenancy and cancelled their cable and internet. The Tenants stated that they were treated poorly throughout the tenancy by the Landlords.

According to Policy Guideline 16; "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case, the Tenants outlined their displeasure with the tenancy, the Landlords' response to issues in the tenancy, as well as their dislike of moving. I find that the Tenants have provided insufficient evidence to demonstrate that they have suffered significant damage or loss. As such, I dismiss the Tenants' claim for aggravated damages without leave to reapply.

I find the Tenants have established an entitlement to a monetary in the amount of \$320.00. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Tenants are entitled to a monetary order in the amount of \$420.00, which has been calculated as follows:

| Claim | Amount |
|------------------------|-----------------|
| Nominal award laundry: | \$200.00 |
| Leaky Fridge | \$120.00 |
| Filing fee: | \$100.00 |
| TOTAL: | \$420.00 |

Conclusion

The Tenants are granted a monetary order in the amount of \$420.00. The monetary order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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: November 25, 2019

Residential Tenancy Branch