



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF MENNONITE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT PSF

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order that the landlord provided services or facilities required by the tenancy agreement or the law; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Application for Dispute Resolution and notice of this hearing by registered mail on October 2, 2019 and has provided copies of a Registered Domestic Customer Receipt addressed to the landlord and a Canada Post cash register receipt bearing that date, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically nominal damages and recovery of the filing fee?

Background and Evidence

The tenant testified that this month-to-month tenancy began on April 1, 1996 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's portion is currently \$702.00 per month payable on the 1st day of each month and there are no rental arrears. No security deposit or pet damage deposited was collected by the landlord. The rental unit is an apartment in a 22 story building and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that at the time of filing the security cameras weren't working, which was a security issue within the building. The system provided that 4 cameras were visible on the tenant's television, and when a person rang the buzzer to be let into the building, whether it be a guest or a delivery person, the tenant could see the person on the TV and determine whether or not to let them in the building. When the cameras weren't working, the tenant would have to go down 20 floors to the entrance to see who was attempting to enter the building before letting someone in. The tenant suffered a heart attack, and that was very onerous. Many of the tenants are in wheelchairs or scooters and can't do so.

The loss of cameras was intermittent. The front door camera was inoperable from last summer until October 17. The tenant requested many times, and in writing, that the landlord have the cameras repaired, which didn't happen until October 17, 2019. The tenant is satisfied with the repair but seeks an order that the landlord maintain the system to ensure it's in operable order. Previously, non-tenants would enter the building and it became a security problem for the residents of the building.

The landlord did not reduce rent accordingly when the service wasn't functioning, and there was no notice or any communication at all from the landlord. The tenant has also provided as evidence for this hearing the Operating Agreement made between the landlord and BC Housing, which specifies that the landlord will maintain the Development in a state of good repair for the benefit of the Residents, and a copy of Residential Tenancy Policy Guideline 22, Termination or Restriction of a Service or Facility. The tenant testified that the service is essential for safety of the residents of the building.

The tenant also seeks a nominal amount of \$1.00 as compensation, simply to make the point for the landlord's failure to maintain the system and notify tenants of the dysfunction.

Analysis

I have reviewed the Operating Agreement and the tenancy agreement. My jurisdiction is with respect to tenancy agreements, not operating agreements.

However, I also accept the undisputed testimony of the tenant that the security camera equipment did not function for several months simply because it was not properly maintained by the landlord. The system has now been repaired to the satisfaction of the tenant however the tenant still seeks an order that the landlord maintain it to prevent it from breaking down.

The *Residential Tenancy Act* requires a landlord to maintain rental units in a manner that makes it suitable for occupation by a tenant. It also states that essential services may not be terminated or restricted by a landlord, and the landlord must give notice to reduce or remove a non-essential service or facility. Further, some facilities or services may be material to the tenancy agreement, meaning that the term is so important that if it was not part of the tenancy the tenant would not have entered into the tenancy agreement. In this case, there always has been a security camera system, which I find is essential and material to the tenancy given the number of floors in the building and its location. In the circumstances, I am satisfied that the landlord should be ordered to comply with the *Act* and the tenancy agreement and maintain the security camera equipment.

I also refer to Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss, which states, in part:

“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.”

In this case, the tenant has applied for \$1.00 in nominal damages, and in the circumstances I find that it has been proven that there has been an infraction of a legal right and the tenant is entitled to nominal compensation in that amount.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$101.00 and I order that the tenant be permitted to reduce rent on a one-time basis in that amount or may otherwise recover it.

Conclusion

For the reasons set out above, I hereby order the landlord to service and/or maintain the security camera system within the rental complex in an operable condition.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$101.00 and I order that the tenant be permitted to reduce rent in that amount on a one-time basis, or may otherwise recover it by filing it for enforcement with the Provincial Court of British Columbia, Small Claims Division.

This order is final and binding and may be enforced.

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: December 10, 2019

Residential Tenancy Branch