



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for their monetary loss or other money owed; and
- recovery of the filing fee.

The listed parties were present, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence.

Thereafter all parties 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 and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlords and recovery of their filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

I heard evidence that this tenancy began on July 1, 2009 and ended on or about October 31, 2019. The beginning monthly rent was \$1,100 and the monthly rent at the end of the tenancy was \$1,400.

The tenant's evidence was that the tenancy ended when they received a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, with an effective move-out date of October 31, 2019.

Tenant's submissions in support of their application-

The tenant submitted that on November 29, 2017, one of the original landlords, DL, and the two attending landlords here, PP and JP, came to the rental unit to inform them that PP and JP were now landlords along with the original landlord. DL is PP's father.

In this meeting, according to the tenant, the landlords informed them that their monthly rent would increase from \$1,100 to \$1,400, beginning March 1, 2018.

The tenant submitted that they requested the increase to be in writing and also asked for a new written tenancy agreement to reflect the names of the additional landlords. They never received either, according to the tenant.

The tenant submitted that they complied with the verbal notice of rent increase as they just wanted to continue to stay living there.

The tenants' monetary claim for the overpayment of rent was \$5,700, which is \$300 for 19 months, or March 2018 through September 2019.

Additionally, the tenants claimed \$300, for the loss of use of a deck, or \$100 for three months.

In support, the tenant submitted that they had notified the landlords of the rotting deck, in November 2017, and it was not fixed. The tenant submitted that her husband bought \$200 worth of plywood and covered the deck; however, the tenant submitted she believed the deck to be unsafe.

On June 11, 2019, according to the tenant, the steps and part of the porch fell off the side of the front entrance. When asking the landlords to repair the deck on June 13, 2019, their reaction was anger towards her, according to the tenant. The landlords came over, put caution tape around the deck and stairs and boarded the front door.

The landlords ultimately replaced the 9' x 12' deck with 9" stairs, which was an illegal size, according to the tenant.

In response to my inquiry, the tenant said she believed the loss of a deck she has enjoyed since the beginning of the tenancy was worth \$100 per month, for 3 months.

Landlords' response to the tenants' application-

The landlord said that when they visited the rental unit in November 2017, their intention was to tell them DL was moving in; however, the tenants said they loved living there and did not want to leave. As a result, they offered to pay the rent increase, without pressure or prejudice, according to the landlord.

The landlord submitted that DL offered to cover the deck with plywood, but they were told that tenant JP had enough plywood.

The landlord submitted the deck just rotted off and they had no intention of replacing it, as a black top was planned.

The landlord denied the events as described by the tenant when she informed them of the deck falling off; rather, it was the tenant who was angry and acting inappropriately.

The landlord denied boarding up the front door, as it was just a single stick.

The stairs were installed in June 2019.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Recovery of rent increase –

The undisputed evidence shows that the monthly rent increased from \$1,100 to \$1,400, beginning on March 1, 2018, by way of a verbal exchange between the parties.

Under section 42(1)(a) of the Act, if the tenant's rent has not previously been increased, a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first payable for the rental unit.

Additionally, the notice of a rent increase must give 3 months' notice of the increase on the approved form.

In this case, I find the evidence substantiates that in March 2018, the monthly rent increased by \$300 as a result of the parties' verbal exchange, rather than by notice on the required form or in the allowed amount, which in 2018 was 4%.

Section 43(5) states that a tenant is entitled to recover the increase if the landlord fails to comply with the Act in increasing the rent.

I therefore find the tenants are entitled to recover their rent overpayments, or \$300 per month from March 2018 through September 2019, for a total of \$5,700 due to the landlords' failure to use the required form and to increase the monthly rent in the correct, allowed amount.

Compensation for loss of deck –

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. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

The tenant submitted that she is entitled to \$100 per month, for three months, for the loss of the deck.

The undisputed evidence is that the tenants did lose the use of the large deck.

Following a review of the evidence submitted by the tenants, however, and after having considered the testimony of all parties present to the hearing, I find the tenant has failed to provide sufficient evidence to prove the amount of or value of damage or loss.

Policy Guideline #16 notes, “an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...*nominal damages* are a minimal award [that may be granted] 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 the tenants did suffer some loss of value of their tenancy, as the deck was a part of the premises. I find an award of nominal damages would be more appropriate in this circumstance for the loss of use of the deck. For these reasons I grant the tenants a nominal award of \$75, or \$25 per month for three months.

I also award the tenants recovery of their filing fee paid for this application, or \$100.

Due to the above, I find the tenants have established a monetary claim of \$5,875, comprised of \$5,700 for recovery of the overpaid rent, \$75 in nominal damages for loss of use of the deck, and the filing fee of \$100.

The tenants are granted a monetary order in the amount of \$5,875, pursuant to section 67 of the Act.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

I also acknowledge that the landlords have their own application for dispute resolution for compensation from the tenants, set for another date.

I, therefore, find it appropriate to advise the landlords that the monetary order given to the tenants is a final, fully enforceable order standing on its own, apart from any

monetary compensation, if any, that may be awarded to the landlords in a future dispute resolution hearing.

Conclusion

The tenants' application has been largely successful, and they have been granted a monetary award of \$5,875, for the reasons set out above.

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: April 9, 2020

Residential Tenancy Branch