



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1162612 BC LTD- Mondivan
Properties and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord was represented by the Operations Manager SB. The occupant AJ with his spouse PM (the tenant) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Canada Post tracking number is listed on the first page of this decision.

The occupant AJ testified the landlord was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on January 14, 2020. The landlord confirmed receipt of the documents on January 16, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*.

The landlord affirmed that his evidence comprising of a letter and three photographs were served by email as per the current emergency orders under Covid-19. The tenant affirmed that he did not receive the email but was satisfied with the landlord reading out the letter submitted in evidence from the caretaker of the building. I find that the tenant was sufficiently served under section 71(2) of the *Act*.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation or damage pursuant to section 67 of the *Act*?
- Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The parties signed a tenancy beginning September 10, 2019. Both parties agreed that the monthly rent was for the amount of \$2,100.00. The tenant paid the sum of \$2,520.00 representing September's 2019 pro-rated rent and \$1,050.00 for the security deposit. Both parties agreed that the landlord returned the sum of \$1,470.00 prorated rent.

Both parties agreed that the tenant and his spouse did not move into the rental unit on September 10, 2019. The occupant affirmed he went to view the property on separate occasions. Each time he visited the rental property to measure the rental unit for furniture, the caretaker of the building would accompany the tenant via the front lobby entrance.

The tenant affirmed that after he paid the rent for September 2019 and the security deposit, he was informed during a visit, two days later, that he was not allowed to use the lobby and elevator in the front of the building but had to use the back entrance because the lobby and the elevator were reserved for tenants in the luxury part of the building. The tenant and occupant testified that the back "alleyway" of the building was used as a tradesman entrance and that they were never informed that they were not allowed to use the elevator in the lobby.

The tenant's spouse affirmed that they rented out the rental unit in the "luxury building" on the assumption that they had access to all the facilities including the use of the elevator (which is included in the tenancy agreement). She testified that she had difficulty walking and consequently the back entrance involved walking up 25-30 steps to their rental unit.

She affirmed that there was no elevator at the back of the building. For these reasons the tenants decided they could not move into the rental unit that had not access to an elevator.

The tenant seeks reimbursement of \$1,050.00 back from the landlord on the basis that they suffered loss based on the supposition that they did not have access to the front part of the building including the lobby and elevator.

The landlord affirmed that when the building was built, the City required that eight of the lower units were to be utilised for low income rentals and that the other part of the building was used for “luxury rentals”. The average rent in the ‘luxury rental’ is approximately between \$9,000 - \$12,000 per month. The landlord affirmed that that the tenants did not require the use of an elevator to access their rental unit from the back entrance and their rent was considerably lower than the tenants who used and access the front part of the building.

The landlord testified that they sustained a loss for rent in the amount of \$1,050.00 The landlord affirmed that the property was re-rented two weeks later, as they generally advertised on Craigslist to relist the rental units and for this reason retained the tenant’s deposit.

The landlord testified that the tenant had breached a material term of the tenancy and that they made all efforts to re-rent the property earlier but were unable to do so.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation by the other party of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and

4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

I accept the landlord's testimony that he made reasonable efforts to re-rent the rental unit at the earliest opportunity and the new tenancy commenced two weeks after the tenant and his spouse declined to move in.

However, I have reviewed all documentary evidence, photographs and the tenancy agreement and find that the tenant leased the rental unit based on the fact it included the use of facilities such as the use of the elevator and the front lobby.

I have reviewed the tenancy agreement, specifically the section relating to "rent and fees" it clearly lists that access to the elevator is included in the tenancy agreement. Both landlord and tenant provided testimony that there is no elevator in the back entrance to the building.

Furthermore, during the visits to measure the rental unit, there was an expectation from the tenants that they would be utilising all the facilities in the building including the use of the front entrance and lobby to the building.

Based on the testimonies of the tenant and landlord. I find the tenant is entitled to receive back the sum of \$1,050.00 pursuant to section 67 of the *Act*.

As the tenant has been successful in this application. I award the tenant reimbursement of the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order to the tenant in the amount of \$1,150.00 including the filing fee.

This order must be served on the landlord. If the landlord fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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 25, 2020

Residential Tenancy Branch