



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wesgroup
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, AAT, PSF, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 9, 2020 (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;
- an order to allow access for the Tenant or their guests;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant K.B., as well as the Landlord's agent, S.L., appeared at the appointed date and time of the hearing. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord allow access to the Tenant or their guests, pursuant to Section 30 of the *Act*?
3. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
4. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on May 1, 2019. Rent in the amount of \$2,730.00 is due to the Landlord by the first day of each month. The Tenants paid a security deposit in the amount of \$1,350.00, as well as a pet damage deposit in the amount of \$1,350.00 which the Landlord currently holds.

The Tenant testified that he was initially attracted to the rental unit based on the fact that it included several amenities such as a gym, games room, conference rooms, steam room and sauna. The Tenant stated that they are permitted to make use of these amenities which are included in the monthly rent.

The Tenant stated that as of March 15, 2020 the Landlord has restricted access to the amenities given the current COVID-19 pandemic. The Tenant stated that he understands the Landlord's stance and precautions that need to be taken, however, the Tenant stated that he is seeking compensation in the amount of \$300.00 per month as compensation for being unable to use the amenities. The Tenant is also seeking \$50.00 in relation to interest being charged based on differed utility payments. If successful, the Tenants are seeking the return of the filing fee paid to make the Application.

The Landlord's Agent responded by acknowledging that the Landlord was required to restrict the Tenants' access to common areas due to the COVID-19 pandemic. The Landlord's Agent acknowledged the Tenant's frustrations, however, stated that the Landlord is merely complying with the directions and recommendations outlined in the Order created in response to the current state of emergency. The Landlord's Agent also

stated that there is no interest being charged to Tenants in relation to differed utility payments.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

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 Landlord. 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.

A declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic. The Order of the Minister of Public Safety and Solicitor General Emergency Program Act Ministerial Order No. M089 applies during the period that starts on the date this order is made and ends on the date on which the declaration of a state of emergency expires or is cancelled.

Tenant's right of access restricted 7 (1) of the Ministerial Order No. M089 states;

"It is not unreasonable under section 30 (1) of the Residential Tenancy Act for a landlord to restrict access to common areas of the residential property by:

(a) a tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by a tenant, if the restriction is necessary (c) to protect the health, safety or welfare of the landlord, the tenant, an occupant or a guest of the residential property due to the COVID-19 pandemic, (d) to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the Emergency Program Act, or (e) to follow the guidelines of the British Columbia Centre for Disease Control or the Public Health Agency of Canada. page 4 of 6

(2) Despite subsection (1), a landlord must not prevent or interfere with the access of a tenant, another occupant of the rental unit or a tenant's guest to the tenant's rental unit."

In this case, I find that the Landlord is permitted to restrict the common areas during the state of emergency, which the Tenants previous had access to. As such, I dismiss the Tenants' Application for an order that the Landlord to provide a service or facility, as well as the Tenants claim for the Landlord to allow access to the Tenant or the Tenant's guests without leave to reapply.

In relation to the Tenants' claim for compensation in the amount of \$300.00 for each month the amenities have been closed to the Tenants, I find that the Landlord has not violated the *Act*, regulations, or tenancy agreement in accordance with Section 7 (1) of the Ministerial Order No. M089. As such, I find that the Tenants are not entitled to monetary compensation for loss of use of the amenities.

Lastly, the Tenants are seeking \$50.00 in relation interest paid in relation to deferred utility payments. During the hearing the Landlord's Agent indicated that there has been no interest charged to the Tenants. In this case, I find that the Tenants have provided insufficient evidence to demonstrate that they have suffered a loss or that the Landlord has breached the *Act*, regulations, or tenancy agreement. As such, I dismiss their claim without leave to reapply.

Seeing as the Tenants were not successful in their Application, the Tenants are not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenants' Application in its entirety without leave to reapply.

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: June 11, 2020

Residential Tenancy Branch