Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

Tenants SS (the tenant) and DS and the landlord attended the hearing. The tenants were assisted by advocate IC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – application under section 51(2) of the Act

The landlord confirmed receipt of the tenants' amendment submitted on June 25, 2021 to claim for a monetary order in an amount equivalent to 12 times the monthly rent payable, under section 51(2) of the Act.

Residential Tenancy Branch Rules of Procedure Rule 4.1 provides:

> An applicant may amend a claim by:
> • completing an Amendment to an Application for Dispute Resolution form; and
> • filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.
> An amendment may add to, alter or remove claims made in the original application.

Per section 64(3)(c), I have amended the tenants' claim to include the request for a monetary order in an amount equivalent to 12 times the monthly rent payable, under section 51(2) of the Act.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the deposit?
2. a monetary order for compensation for damage or loss?
3. a monetary order in an amount equivalent to 12 times the monthly rent?
4. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on February 01, 2020 and ended on September 03, 2020. Monthly rent was $1,250.00, due on the first day of the month. At the outset of the tenancy a deposit of $625.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates that rent includes water, electricity and access to the laundry room one day per week for two or three loads of laundry.

Both parties agreed the tenants rented the basement rental unit, the landlord occupied the main floor and they shared the backyard.

The landlord confirmed receipt of the tenants' forwarding address in writing on September 10, 2020 and did not apply for an authorization to retain the deposit. The tenants did not authorize the landlord to retain the deposit. This application was submitted on February 26, 2021.

The tenants are claiming for compensation in the amount of $140.83 for laundry expenses. The tenant affirmed she asked the landlord to allow her to use the laundry and the landlord did not allow her to use the laundry room. The tenant submitted into evidence text messages:

> T: LAUNDRY DOOR!!! Will send the bill for laundry your way (August 04, 2020 at 8:00am)
> T: Laundry tomorrow at 8am. Open the door by then (August 23,2020)
> T: OPEN THE LAUNDRY DOOR!! (August 24, 2020 at 8:29am)
> T: I believe you don't want to open the laundry door. Be ready to pay the laundromat bill or get ready for another dispute resolution. (August 24, 2020 at 9:26am)
> T: Laundry to be done tomorrow. Open by 11am (August 29, 2020)
> T: Seems like you have decided not to open the laundry door again. So be it. I will forward the bill again to you. (August 30, 2020, at 12:02 pm)

The tenant stated she incurred laundry expenses on August 04, 25 and 31, 2020 because the landlord did not allow her to use the laundry. The tenant submitted into evidence three laundry receipts dated August 04, 25 and 31, 2020 in the total amount of $140.83.

The landlord testified he did not allow the tenant to access the laundry on August 04, 2020 because he was sleeping.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on August 10, 2020. A copy of the Notice was submitted into evidence. It states that the rental unit will be occupied by the landlord's father or mother and the effective date was October 10, 2020.

The tenants are claiming for compensation in the amount of $15,000.00 (12 months of monthly rent payment of $1,250.00) because a close family member, as defined by section 49 of the Act, did not occupy the rental unit.

The landlord said the Notice was served with the intent of his niece and nephew occupying the rental unit. The landlord affirmed his niece moved to the rental unit on November 02, 2020, his nephew moved on December 23, 2020 and both are currently occupying the rental unit.

The tenants are claiming for compensation in the amount of $750.00 for loss of quiet enjoyment from April 01 to September 03, 2020 ($150.00 per month).

The tenant stated there was a camera recording the rental unit's front door and when the door was opened the camera recorded the interior of the rental unit. The tenant testified the landlord did not inform the tenants about the camera before the tenancy started and she asked the landlord to cover the camera a few days after the tenancy started, as it breached her privacy. The tenant said the camera was uncovered during 90% of the tenancy. The tenants submitted three photographs showing the camera covered and uncovered.

The landlord affirmed the camera was installed for security reasons, it was covered during 95% of the tenancy and it does not breach the tenants' privacy, as it does not capture images inside the rental unit.

The tenant submitted into evidence text messages dated June 06, 2020:

> L: Send me rent
> L: I covered the camera happy!
> L: This is not spy camera this is security camera but you guys don't like camera over there so I covered it
> T: Can you text all this to my wife please…she does all e transfers for rent

The tenants submitted a prior application for dispute resolution (the prior application) on June 07, 2020 claiming for an order for the landlord to reduce rent for repairs, an order requiring the landlord to provide services of facilities, an order requiring the landlord to comply with the Act and a monetary order for compensation for damage under the Act. The parties reached a settlement on July 03, 2020. A copy of the settlement decision was submitted into evidence:

> [redacted]
> 4. The parties are at liberty to apply for dispute resolution for issues related to privacy/camera and harassment.

The tenant stated she filled a child swimming pool (the pool) using the backyard hose and the landlord informed her that she must pay $50.00 for the extra water used to fill the pool if she fills it again. The landlord testified he only asked the tenant to use water carefully.

The tenant said the landlord asked her to reduce the water consumption and prohibited her from using the backyard hose to wash her car in April 2020. The landlord affirmed he did not ask the tenant to reduce the water consumption and he did not prohibit the tenant from using the backyard hose.

The tenant stated on August 23, 2020 the landlord's wife banged on the rental unit's door and yelled at the tenants. The landlord testified his wife knocked on the rental unit's door and politely asked the tenants about the garbage.

The tenant said the landlord was rude and hostile during the last five months of the tenancy. The landlord affirmed he was not rude and hostile.

The tenant stated on September 03, 2020 the landlord followed the moving truck to her new address and asked the driver questions regarding the tenants. The tenant submitted into evidence a letter signed by the moving truck driver on September 30, 2020:

> I am writing this letter to inform you about your landlord. He was asking a lot of question about your moving (September 3rd, 2020) while I was waiting in truck during the move out. He even followed the truck to your new place when we were bringing the furniture over. He has a White [brand redacted] SUV with license (redacted).

The tenant submitted into evidence a photograph of the vehicle mentioned by the truck driver parked on the rental unit's driveway.

The landlord testified he did not follow the moving truck.

The tenant said that because of the constant harassment suffered during the last five months of the tenancy her mental health was impacted and she could not work from August 15 to September 30, 2020, incurring a loss of $4,500.00 of work income. The tenant submitted a work absence certificate signed by a physician:

> This is to certify that [Tenant SS] was assessed in this office and is unable to work due to multiple stressors for the last few months. From August 15, 2020 to September 30, 2020.

The tenant submitted into evidence a monetary order worksheet dated June 25, 2021 indicating four claims in the total amount of $17,140.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Deposit

I accept the undisputed testimony that the landlord received the tenants' forwarding address in writing on September 10, 2020 and the tenants did not authorize the landlord

to withhold the deposit. The landlord has not brought an application for dispute resolution claiming against the deposit and did not return the deposit.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a)the date the tenancy ends, and
> (b)the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
> […]
> 6)If a landlord does not comply with subsection (1), the landlord
> (a)may not make a claim against the security deposit or any pet damage deposit, and
> (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

> B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.
> […]
> 11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.
> […]
> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> -if the landlord has not filed a claim against the deposit within 15 days of the later

> of the end of the tenancy or the date the tenant's forwarding address is received in writing;
> -if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of $1,250.00 ($625.00 x 2).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

Laundry expenses

Section 27 of the Act addresses the landlord's ability to terminate or restrict services of facilities:

> (1)A landlord must not terminate or restrict a service or facility if
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b)providing the service or facility is a material term of the tenancy agreement.
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
> (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
> (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Residential Tenancy Branch Policy Guideline 01 states:

> 1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.
> 2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on the tenant's undisputed testimony, the August 2020 text messages, the laundry receipts and the tenancy agreement, I find the landlord breached section 27(2) of the Act by restricting the tenant's access to the laundry service included in the

tenancy agreement on August 05, 25 and 31, 2020 and the tenants suffered a loss of $140.83 to have access to the service denied by the landlord.

As such, the tenants are entitled to compensation for the restriction of access to the laundry in August 2020 in the amount of $140.83.

12 month compensation

Section 49(1) of the Act states:

> "close family member" means, in relation to an individual:
> (a)the individual's parent, spouse or child, or
> (b)the parent or child of that individual's spouse;

Section 49(3) of the Act states: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if:

> (a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
>
> (b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Branch Policy Guideline 2A states:

> "Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit."
> […]
> 6-month occupancy requirement
> The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).
> […]
> E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

> If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:
> • taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice
> the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

I accept the landlord's undisputed testimony that the Notice was served with the intent of the landlord's niece and nephew occupying the rental unit and that his niece has been occupying it since November 02, 2020 and his nephew since December 23, 2020.

I find that niece and nephew does not meet the definition of close family member set out in section 49(1) of the Act.

As such, per sections 49(1) and 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of $15,000.00 ($1,250.00 x 12).

Loss of quiet enjoyment

Section 28 of the Act states:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> **(a)reasonable privacy;**
> **(b)freedom from unreasonable disturbance;**
> (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
> **(d)use of common areas for reasonable and lawful purposes, free from significant interference.**

Residential Tenancy Branch Policy Guideline 6 states:

> **A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.** Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable

> disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
> […]
> Compensation for Damage or Loss
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16**).**
>
> (emphasis added)

Based on the tenant's convincing testimony, the photographs submitted by the tenant, the text messages dated June 06, 2020, the prior application settlement and the physician's certificate, I find the tenants proved, on a balance of probabilities, that the landlord installed a camera that captured images both inside and outside the rental unit, the landlord was aware the tenants felt their privacy was breached and maintained the camera uncovered during 90% of the tenancy. I find that the camera was installed directly next to the rental unit's door and a camera capturing images inside the rental unit is a serious breach of privacy.

I further find the landlord's actions deprived the tenants of their right to reasonable privacy and freedom from unreasonable disturbance and as a result of the landlord's failure to comply with section 28(a) and (b) of the Act, the tenants suffered damage in the form of mental anguish.

The parties offered conflicting verbal testimony about the landlord asking the tenant to pay an extra $50.00 for water consumption, the usage of the backyard hose, the August 23, 2020 incident and the landlord's hostile behaviour during the last five months of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant did not provide any documentary evidence to support her claim that the landlord asked her to pay an extra $50.00 for water consumption, the usage of the backyard hose, the August 23, 2020 incident and the landlord's hostile behaviour during the last five months of the tenancy. The tenant did not call any witnesses. I find the tenant did not prove, on a balance of probabilities, the landlord's actions above referenced.

Based on the testimony offered by both parties, I find that asking the tenant to use water carefully is not a substantial interference with the ordinary and lawful enjoyment of the premises.

Based on the tenant's convincing testimony, the letter dated September 30, 2020 and the photograph submitted by the tenant, I find the tenants proved, on a balance of probabilities, that the landlord followed the tenants' moving truck to their new address and asked the truck driver questions about the tenants.

In consideration of the quantum of damages, I refer again to Residential Tenancy Branch Policy Guideline 6:

> **In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.**
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.
>
> (emphasis added)

The tenants submit that the value of the damage should be $150.00 per month from April 01 to September 03, 2020, in the total amount of $750.00. The tenants proved two of the seven landlord's actions related to their claim for loss of quiet enjoyment.

In view of the circumstances, pursuant to sections 7 and 67 of the Act, I find it is reasonable to award the tenants compensation for the breach of quiet enjoyment in the amount of $200.00.

Filing fee and summary

As the tenants were successful in this application, I find the tenants are entitled to recover the $100.00 filing fee.

In summary, the tenants are entitled to:

Expenses	**$**
Deposit	1,250.00
Laundry expenses	140.83
12 month compensation	15,000.00
Loss of quiet enjoyment	200.00
Filing fee	100.00
Total	16,690.83

Conclusion

Pursuant to sections 38, 51, 67 and 72 of the Act, I grant the tenants a monetary order in the amount of $16,690.83.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to 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: July 26, 2021

Residential Tenancy Branch