



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on January 19, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed;
- A rent reduction; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on March 10, 2023, and was attended by the Tenant, the Tenant's spouse H.L., an interpreter for the Tenant, the Landlord, and the Landlord's daughter L.Z. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and neither party raised arguments that evidence should be excluded, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to the Rules of

Procedure, recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

I identified that the rental unit address in the tenancy agreement is the same as the address listed for the Landlord in the tenancy agreement. The parties agreed that the Landlord and Tenant never shared a kitchen or bathroom and confirmed that a tenancy under the Act exists between them.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement before me is a fixed term tenancy agreement between September 16, 2017 – September 31, 2018, and states that rent in the amount of \$2,400.00 is due each month. Although the written tenancy agreement does not specify the day rent is due, the parties agreed at the hearing that it is due on the first day of each month. The parties agreed that the rental unit is a single-family home but disagreed about whether the entire home and property was rented to the Tenant under the tenancy agreement. The Tenant stated that the entire home and property was rented to them for their exclusive use, however, the Landlord argued that there was a verbal agreement for them to retain use and access to the laundry room and exclusive possession of a basement storage room.

The parties agreed that the tenancy agreement was verbally amended by way of mutual agreement in July of 2021 to reduce the amount of space rented to the Tenant, as well as the amount of rent owed. The parties agreed that the Landlord's ex spouse would reside in a portion of the home referred to by the parties as either a living room and bathroom, or a bedroom and bathroom, which has exterior access via the back yard. They also agreed that the amount of rent owed by the Tenant was reduced to \$2,000.00 per month, plus \$100.00 for utilities.

The Tenant argued that they were locked out of the back yard by the Landlord in 2021, without their agreement or consent. Although the Landlord agreed that the Tenants were locked out of the back yard, they stated that this formed part of the verbal amendment to the tenancy agreement as their ex spouse's access to their portion of the home was through the backyard. While the Tenant acknowledged the location of their access, they denied agreeing to give up all use of the back yard.

The Tenant argued that in October of 2021 the Landlord took over the laundry room by turning it into a bedroom for their daughter without their permission or authority under the Act to do so. The Tenant's daughter L.Z. stated that they had originally planned to move into the storage room, but the Tenant had locked it off without permission and were refusing to give them access or remove their possessions. As a result, the laundry facilities were moved by mutual agreement to the furnace room and the laundry room was renovated and turned into their bedroom. The Tenant denied that any verbal agreement to this affect existed.

Although the parties agreed that a written agreement was signed between the Landlord and the Tenant's spouse in July of 2022, wherein it was agreed that possession of the entire basement would be given back to the Landlord, they disagreed about the enforceability of this agreement. The Landlord argued that as the Tenant's spouse has resided in the rental unit for the entire duration of the tenancy, they are therefore a tenant under the tenancy agreement and the written agreement signed by them is binding. The Tenant disagreed, arguing that their spouse is not a Tenant named in the tenancy agreement and therefore they were not authorized to make this agreement with the Landlord. They also argued that the agreement was entered into by their spouse under duress.

The Landlord denied placing any pressure on the Tenant's spouse to sign the agreement and stated that the Tenant turned over possession of the basement three months later and the tenancy continued without issue for two years.

The Tenant sought \$10,150.00 in retroactive compensation for the loss of use of the back yard, storage unit, laundry room, and basement. They also sought an ongoing rent reduction in the amount of \$700.00 for the ongoing loss of use, and recovery of the \$100.00 filing fee. The Landlord argued that the amounts sought are unreasonable as this would value each room in the house at \$350.00. The Tenant argued that the Landlord's position is unreasonable given that the Landlord submitted their own Monetary Order Worksheet valuing the rooms in the house at this same amount.

Both parties submitted documentary evidence for my consideration.

Analysis

Much of the evidence before me is not in English, including a voice recording and written documentation. Where documents have been translated by a professional translator or the accuracy of the personal translations was undisputed, I have considered the translations accurate. Where professional translations were not provided and the accuracy of the translations was in question, I have afforded them little weight.

Section 28(c) of the Act states that a tenant is entitled to exclusive possession of a rental unit subject only to the landlord's right to enter the rental unit under section 29. Section 30(1)(a) of the Act also states that a landlord must not unreasonably restrict access to the residential property by the tenant of a rental unit.

The tenancy agreement does not state that any portion of the home or property is excluded from possession by the Tenant under the tenancy agreement and at the hearing the parties agreed that it was a single-family home. Although the Landlord argued that there was a verbal agreement in place for them to retain possession of a storage room and access to the laundry room, the Tenant denied that such a verbal agreement existed. As a result, I find the written tenancy agreement before me to be the best evidence regarding what was rented to the Tenant under the agreement. As no stipulations were made in this written tenancy agreement for the Landlord to retain possession of a storage room and access to the laundry room, I find that no such agreement existed and that the Tenant was therefore entitled to exclusive use and possession of the entire single-family home and property under the original tenancy agreement, with the exception of the garage, as the Landlord stated this was retained for their use and the Tenant did not disagree.

Section 14(2) of the Act states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. As the parties agreed that the tenancy agreement was amended in July of 2021 to reduce rent to \$2,100.00 per month, plus \$100.00 for utilities, and turn over possession of a portion of the main floor (either a living room or bedroom with a bathroom) to the Landlord's ex spouse, I accept this as fact.

Although the Landlord argued that possession of the back yard was also given up by the Tenant as part of this agreement, the Tenant disagreed. As the Tenant denied that access to the back yard was given up under the verbal agreement and the Landlord did not submit documentary or other evidence that satisfies me that this was mutually agreed to, I find that it was not. I make a similar finding in relation to the Landlord's argument that there was a mutual agreement to move the laundry facilities to the furnace room to allow their daughter to move into the former laundry room.

Although the Landlord argued that the Tenant's spouse agreed in writing that the Landlord could regain use and possession of the basement, and that they did so as a result, I find that any agreement reached between the Tenant's spouse and the Landlord to that affect was invalid as the Tenant's spouse is not named as a tenant in the tenancy agreement. Although the Landlord argued that the Tenant's spouse is a tenant under the tenancy agreement despite not being named as a tenant, the Tenant disagreed. Based on the written tenancy agreement before me and the affirmed testimony of the Tenant, I am satisfied on a balance of probabilities that the Tenant's spouse is an occupant of the rental unit, not a tenant under the tenancy agreement. Had the Landlord wished the Tenant's spouse to be a tenant under the tenancy agreement, they should have included them as a tenant at the outset of the tenancy. It was also open to the parties to mutually agree to add the Tenant's spouse as a named tenant on the tenancy agreement, yet this was not done.

As occupants of a rental unit do not have either rights or obligations under the Act, I therefore find that any agreement entered into by the Landlord and the Tenant's spouse with regards to the rental unit or tenancy agreement to be unenforceable and invalid.

I accept the Tenant's valuation of the losses suffered as a result of the Landlord's breaches to sections 28(c) and 30(1) of the Act and find their valuation of \$350.00 per room lost to be both reasonable under the circumstances and consistent with the Landlord's own valuation in the documentary evidence before me. As a result, I grant the Tenant the \$10,150.00 sought in retroactive compensation for the Landlord's

unauthorized repossession of the back yard, a storage room, and the laundry room. I also grant the Tenant an ongoing monthly rent reduction in the amount of \$700.00 per month, beginning April 1, 2022. This rent reduction shall continue until either possession of the above noted portions of the home are returned to the Tenant or the tenancy ends, whichever is earlier. As the Tenant was successful in their Application, I also grant them recovery of the filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of \$10,250.00.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$10,250.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. Pursuant to section 72(2)(a) of the Act, the Tenant may withhold upcoming rent up to an amount of \$10,250.00 in lieu of enforcing the Monetary order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 21, 2023

Residential Tenancy Branch