



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application filed February 13, 2013: OPC; MND; MNR; MNDC; MNSD

Tenant's application filed February 1, 2013: MNSD; MNDC; LAT; RR; FF; O

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession for Cause; a Monetary Order for unpaid rent, loss of revenue and damage to the rental unit; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; an Order allowing the Tenant to change the locks to the rental unit; an Order authorizing a reduction in rent for repairs, services or facilities agreed upon but not provided; recovery of the filing fee from the Landlord for the cost of the Application; return of the security deposit; and "other".

The parties and the Tenant's witnesses gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with her Notice of Hearing documents and copies of her documentary evidence by handing the documents to the Landlord on February 4, 2013. The Landlord acknowledged receipt of the documents.

The Landlord testified that he served the Tenant with his Notice of Hearing documents and copies of his documentary evidence by registered mail sent February 18, 2013. The Tenant acknowledged receipt of the documents.

Preliminary Matters

At the outset of the Hearing, it was determined that the Tenant moved out of the rental unit on February 2, 2013. Therefore the Landlord's request for an Order of Possession is dismissed, as he has taken back possession of the rental unit. Likewise, the Tenant's requests for an Order allowing her to change the locks to the rental unit and an Order authorizing a reduction in future rent are dismissed, as the tenancy has ended.

The Tenant did not provide any details in her Application with respect to her request for “other” relief, however in her Monetary Order Worksheet, she identifies that she is seeking return of her security deposit. I amended the Tenant’s application to include a request for return of the security deposit, for the following reasons:

- The Landlord was served with the Tenant’s Monetary Order Worksheet when he was served with a copy of her Application for Dispute Resolution and therefore I find that he was put on notice that she was seeking return of the deposit; and
- The Landlord has also applied against the security deposit. The tenancy is over and Residential Tenancy Branch Policy Guideline 17 provides that an arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the Tenant has applied for its return.

Issues to be Decided

- Is the Landlord entitled to a monetary award for damages, unpaid rent and loss of revenue?
- Is the Landlord entitled to apply a portion or all of the security deposit towards a monetary award?
- Is the Tenant entitled to return of a portion or all of the security deposit?
- Is the Tenant entitled to compensation for moving costs, overpayment of rent, loss of peaceful enjoyment of the rental unit?

Background and Evidence

The rental unit is a basement suite in the Landlord’s house. The Landlord lives in the upper floor of the house. This tenancy began on November 1, 2012. A security deposit in the amount of \$300.00 was paid on October 3, 2012. There was no written tenancy agreement. There was no Condition Inspection Report prepared at the beginning or the end of the tenancy.

The Landlord testified that monthly rent was \$750.00, but that he had agreed to reduce it to \$700.00 for one month only to help the Tenant with her moving expenses. Utilities were included in the rent. The Landlord stated that the Tenant’s boyfriend moved into the rental unit and therefore the utility costs increased. He stated that the rent reverted to \$750.00 effective December 1, 2012, and that the Tenant paid that amount willingly. The Landlord testified that he increased the rent to \$850.00 to cover increased utility costs because of the additional occupant, but the Tenant refused to pay the increase.

The Tenant disputed the Landlord’s testimony with respect to rent. She denied that rent was reduced to \$700.00 for one month only and stated that rent was agreed to be only

\$700.00 at the beginning of the tenancy. The Tenant stated that the Landlord visited her at the rental unit on December 8, complaining that utilities had gone up and that he wanted an extra \$50.00. She said she paid the extra \$50.00 because the Landlord confronted her when she had company and she did not want to cause a scene. She testified that she told the Landlord that what he was doing was not legal, but the Landlord replied that he “can do anything because of no tenancy agreement”. The Tenant testified that the Landlord advised her on January 2, 2013 that rent was increasing to \$850.00, so she filed an Application for Dispute Resolution on January 3, 2013, seeking to dispute the rent increase. She stated that on January 8, 2013, she received a Notice to End Tenancy for Cause posted on her door, so she amended her January 3rd Application to include a request to cancel the Notice to End Tenancy. The Hearing with respect to the Tenant’s January 3rd amended Application has already taken place.

The Landlord stated that the Tenant, or her boyfriend, turned up the heat on the hot water heater which caused the Landlord to burn his hand. He stated that the Tenant did laundry 2 or 3 times a week, which he found to be excessive, and that she would do laundry late at night which disturbed his sleep. The Landlord testified that the Tenant and her boyfriend were very noisy, which caused him to call the police on several occasions.

The Tenant stated that the water was not hot enough for her to take a comfortable shower and that the Landlord kept turning it down. She stated that she had to boil water to do dishes on one occasion. The Tenant stated that the Landlord constantly turned the breaker for the washer and dryer off, thereby limiting her use of the laundry. She stated that on December 24, 2013, the Landlord turned a breaker off so she did not have power to some of her lights, telephone or internet. The Tenant stated that she did not have access to the breakers because the breaker box was in the Landlord’s suite. The Tenant denied being noisy and stated that the Landlord called the police unnecessarily, thereby harassing her. She stated that the police advised her to keep notes because what the Landlord was doing was harassment.

The Landlord alleged that the Tenant’s boyfriend was living at the rental unit. The Tenant denied that her boyfriend lived at the rental unit.

The Landlord testified that the Tenant had 6 dogs and a cat and that he had only authorized one dog in the rental unit. The Landlord stated that the Tenant’s pets had done damage to the wooden floor. He said the Tenant’s moving van also damaged the gutter over the garage, and that the Tenant did not clean the rental unit at the end of the tenancy and left a lot of garbage behind. The Landlord testified that the Tenant damaged a closet in the rental unit that would have to be replaced. He stated that it

would take two months for damages to be repaired. The Landlord provided photographs (which he stated were taken on February 5 or 6), two invoices and three electric bills in evidence.

The Landlord seeks a monetary award, calculated as follows:

Loss of revenue (February/March) @\$750.00 per month	\$1,500.00
Repair damage to gutter	\$952.00
Cost to replace closet	\$600.00
Cost to replace damaged floor	\$140.00
Cost to clean the rental unit (Landlord's labour)	\$125.00
Cost of additional utilities (3 months @ \$50.00)	<u>\$150.00</u>
TOTAL CLAIM	\$3,467.00

The Tenant stated that her dog had just had puppies and denied that there was any damage to the floor. She agreed that the moving van had damaged the gutter, but stated that she spoke to an insurance adjuster and got two estimates to repair the damage: one for \$195.00 plus tax; and the other for \$220.00 in total. The Tenant agreed that she should pay for the damage and stated that she thought \$220.00 was a fair price. The Tenant testified that she cleaned the rental unit at the end of the tenancy and left no garbage behind. She stated that she took two trips to remove her furniture and belongings on February 2, 2013, and that the Landlord must have taken the photographs between loads and before she had finished moving or cleaning the rental unit. The Tenant stated that there was no closet in the rental unit.

The Tenant testified that there were mice or rats in the rental unit. She stated that she told the Landlord about the mice on January 19 and 29, but the Landlord did not do anything to get rid of them. The Tenant stated that she was concerned about hantavirus, which she stated can be life threatening.

The Landlord stated that he checked the rental unit for rodents with a witness and found "some apple and a very small amount of rodent feces". He stated that he had a mouse problem in July, 2012, but he used a chemical to get rid of the mice and that they were eradicated.

The Tenant testified that on January 30, 2013, she gave the Landlord written notice to end the tenancy effective February 17, 2013, because: of the mice and his failure to exterminate them; his harassing phone calls, visits, and calling the police for no reason; turning off the breakers; and restricting her laundry. The Tenant stated that she did not pay any rent for the month of February, 2013.

The Tenant provided a copy of her letter dated January 30, 2013, copies of cheques to the Landlord, and a copy of a mover's estimate in evidence. The Tenant stated that she actually ended up paying less than the mover's estimate.

The Tenant's witness JR lived in the rental unit prior to the Tenant. He stated that he used to have to leave a rolled-up towel under the door to stop mice from coming into the suite. JR stated that the Landlord came into the rental unit, without notice or permission, to fix the toilet. He stated that the Landlord blamed him for the blockage and charged him \$40.00 for plumbing.

The Tenant's witness MS is the Tenant's boyfriend. He stated that he stayed with the Tenant 3 or 4 nights a week, but did not live at the rental unit. MS testified that he saw a black mouse on the day the Tenant moved into the rental unit and was there when the Tenant complained to the Landlord about it over the phone. WS said he heard mice in the ceiling of the rental unit and observed urine stains in the bathroom.

The Tenant seeks a monetary award, calculated as follows:

Cost of moving	\$691.08
Compensation for harassment (3 months' rent)	\$2,100.00
Return of overpayment for utilities	\$50.00
Return of security deposit	<u>\$300.00</u>
TOTAL CLAIM	\$3,141.08

Analysis

When an applicant applies for damage or loss under the Act, regulation or tenancy, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. In this case, both parties have applied and therefore each must prove their own claim on the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the other party pay for the loss requires each party to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the parties followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Is the Landlord entitled to a monetary award for damages, unpaid rent and loss of revenue?

The Tenant provided copies of cheques to the Landlord in evidence. The rent cheques were in the amount of \$700.00. There was an additional cheque, dated December 8, 2012, for \$50.00, which bears the notation "extra for hydro". Based on the testimony and evidence of both parties, **I find that monthly rent was \$700.00, that rent included utilities** and that the additional \$50.00 that the Tenant paid was for additional hydro costs.

Neither party provided a complete copy of the Decision with respect to the prior Hearing that took place, however the Landlord provided the last page of the Decision which included the conclusion. The last page indicates that the Decision was issued on January 29, 2013 and that the Notice to End Tenancy was set aside due to insufficient evidence. Therefore, I find that the tenancy did not end as a result of the Landlord's Notice to End Tenancy for Cause.

Section 45 of the Act provides the only ways a Tenant can end a tenancy. In this case, the Tenant is relying on Section 45(3) of the Act, which states:

- 45** (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and **has not corrected the situation within a reasonable period after** the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(emphasis added)

I find that the Tenant's notice to end the tenancy did not provide the Landlord with a reasonable period to exterminate the mice, or to correct his behavior. The Tenant's notice did not state that **if** the Landlord did not correct the breach, **then** the Tenant

would move out on February 17, 2013. Therefore, I find that the Tenant did not provide due notice to end the tenancy. The Tenant did not pay any rent for February, 2013, and I find that the Landlord is entitled to unpaid rent for February in the amount of **\$700.00**.

I find that the Landlord provided insufficient evidence that it would take two months for him to repair damages allegedly caused by the Tenant and that he could not rent the rental unit for March, 2013. Therefore the **Landlord's request for loss of revenue for March, 2013, is dismissed.**

Section 13 of the Act requires the Landlord to prepare a tenancy agreement in writing. Monthly rent was \$700.00 and included utilities. There was no clause in the tenancy agreement that provided for additional rent for additional occupants. In fact, contrary to Section 13 of the Act, there was no written tenancy agreement. Therefore, the **Landlord's request for \$150.00 for the cost of additional utilities is dismissed.**

During the Hearing, the Tenant admitted causing damage to a gutter at the rental unit, but disputed the amount that the Landlord was seeking in damages. The invoice that the Landlord provided in evidence included other repairs in addition to the damaged gutter, and was not broken down to indicate what portion of the invoice was for repairing the gutter. The Tenant testified that she had estimates in the \$220.00 range and agreed to pay that amount for damaging the gutter. Therefore, I allow this portion of the Landlord's application in the amount of **\$220.00**.

Sections 23 and 35 of the Act require a landlord and tenant together to inspect the condition of a rental unit at the beginning of a tenancy and again at the end of a tenancy, before a new tenant occupies it. The onus is on the landlord to offer the tenant at least 2 opportunities to do the inspection. If the tenant does not participate after being offered these opportunities, then the landlord must make the inspection, complete and sign the report, and provide the tenant with a copy of the report.

In this case, the Landlord did not comply with Sections 23 and 35 of the Act. The Tenant disputes damages to a closet (which she testified didn't exist) and to the floor. She also testified that she left the rental unit reasonably clean at the end of the tenancy. I find that the Landlord has not provided sufficient evidence to prove part two of the test for damages set out above. Therefore, **the Landlord's monetary claim with respect to his labour for cleaning the rental unit, damage to the closet door and floor in the total amount of \$865.00 is dismissed.**

Is the Landlord entitled to apply a portion or all of the security deposit towards his monetary award?

Section 38 of the Act provides that a landlord extinguishes his right to claim against a security deposit for **damages** if he fails to comply with Sections 23 and 35 of the Act. However, he may still file a claim against the deposit for unpaid rent. Therefore, I allow the Landlord's application to set off the **\$300.00** security deposit against the unpaid rent.

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I find that the Landlord has established a total monetary award, calculated as follows:

Unpaid rent for February, 2013	\$700.00
Less set-off of security deposit	- <u>\$300.00</u>
Subtotal	\$400.00
Damage to gutter	\$220.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL monetary award for the Landlord	\$670.00

Is the Tenant entitled to return of a portion or all of the security deposit?

The Landlord applied against the security deposit within 15 days of the end of the tenancy. The security deposit has been set-off against the Landlord's monetary award and therefore **this portion of the Tenant's application is dismissed.**

Is the Tenant entitled to compensation for moving costs, overpayment of rent and loss of peaceful enjoyment of the rental unit?

I dismiss the Tenant's application for moving costs. The Tenant did not provide documentary proof of the amount she paid the movers and therefore I find that she did not provide sufficient evidence to prove this portion of her claim. **The Tenant's request for moving costs is dismissed.**

Having found that rent was \$700.00 and that utilities were included in the rent, I find that the Tenant is entitled to return of the **\$50.00** that she paid to the Landlord on December 8, 2012.

Section 32 of the Act requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Section 27 of the Act provides that a landlord may terminate or restrict a non-essential service or facility upon providing the tenant with 30 days' written notice and rent reduction in the equivalence of the value of the tenancy resulting from the termination or restriction of the service or facility.

Section 28 of the Act protects a tenant's right to quiet enjoyment, including reasonable privacy and freedom from unreasonable disturbance.

Based on the testimony of both parties, I find that the Landlord did not exterminate the mice in a timely manner, contrary to the provisions of Section 32 of the Act. I also find that the Landlord failed to comply with the provisions of Section 27 of the Act by restricting the Tenant's use of the laundry facilities and electricity to the rental unit. I accept the Tenant's testimony and documentary evidence that the Landlord also failed to comply with Section 28 of the Act by infringing on her privacy and by repeatedly and unnecessarily calling the police to the rental unit.

I find that the tenancy agreement was devalued as a result of the Landlord's non-compliance with the Act and provide the Tenant with a monetary award in the amount of **\$675.00** (\$225.00 per month for 3 months).

The Tenant has been partially successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

I find that the Tenant has established a total monetary award, calculated as follows:

Return of overpayment of utilities	\$50.00
Compensation for damage or loss	\$675.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL monetary award for the Tenant	\$775.00

Set-off of awards

I hereby set off the Landlord's monetary award against the Tenant's monetary award and provide the Tenant with a Monetary Order for the balance in the amount of **\$105.00**.

Conclusion

The Landlord has established a monetary claim in the amount of **\$670.00**. The Tenant has established a monetary claim in the amount of **\$775.00**. I set off the Landlord's award against the Tenant's, and hereby provide the Tenant with a Monetary Order in the amount of **\$105.00** for service upon the Landlord. This Order may be filed in the

Provincial Court of British Columbia (Small Claims) and 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: March 14, 2013

Residential Tenancy Branch

