



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for monetary compensation.

The initial hearing was adjourned for the Tenant to serve her evidence on the Landlord, as well as for additional evidence to be accepted by the Landlord in response to the Tenant’s evidence. Two agents for the Landlord were present at the initial hearing, and one agent (the “Landlord”) attended the reconvened hearing on behalf of the Landlord. One of the Tenants was present for the duration of both teleconference hearings.

At the reconvened hearing, the parties confirmed their understanding of the importance of being truthful, after being affirmed at the initial hearing. The Tenant stated that she was unable to serve her evidence to the Landlord as a computer issue had caused her to lose copies of her original evidence. She stated that she requested a copy of the evidence from the Residential Tenancy Branch, but that this was never received.

The Landlord confirmed that they did not receive copies of the Tenant’s evidence. They also stated that they served the Tenant with copies of the evidence they submitted prior to the reconvened hearing, but the registered mail package was returned as undeliverable. The Landlord testified that they sent the mail to the Tenant’s address as stated on the Application for Dispute Resolution. The Tenant confirmed that the address she provided on the Application did not include a unit number and that no other forwarding address had been provided to the Landlord.

As such, I find that by sending the registered mail package to the service address provided by the Tenant, the Landlord served copies of their evidence in accordance with Section 88 of the *Act*, despite the Tenant not receiving the package. Therefore, the Landlord’s evidence will be included in this decision.

The parties were informed that the Tenant's documentary evidence would not be considered as part of this decision, due to not serving it on the Landlord. A party who has filed for Dispute Resolution has a responsibility to keep and maintain their evidence and serve a copy to the other party in accordance with the *Residential Tenancy Branch Rules of Procedure*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the security deposit be returned to the Tenant?

Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties were in agreement that the tenancy began in August 2016 for a monthly rent of \$1,650.00. A security deposit of \$825.00 was paid at the outset of the tenancy. Monthly rent at the end of the tenancy was approximately \$1,675.00. The Tenant moved out of the rental unit at the end of January 2018. The tenancy agreement submitted into evidence confirms the details as stated by both parties.

The Tenant applied for the return of her security deposit in the amount of \$400.00. The Landlord submitted into evidence a letter, dated March 15, 2018, in which they confirm a financial settlement between themselves and the co-tenant. The letter states that through the agreement, the Landlord has retained the full security deposit. In addition, the letter confirms that the Landlord received a payment of \$1,664.55 from the co-tenant for damages and repairs in the rental unit.

The Tenant confirmed that she and the co-tenant were on the same tenancy agreement, although it was only herself that occupied the rental unit. She stated that she was not in agreement as to the amount of damages charged by the Landlord and that the co-tenant paid and that she is entitled to \$400.00 returned from the security deposit.

The Landlord submitted an outline of the damages in the rental unit and charges for repairs, along with the Condition Inspection Report.

The Tenant has also claimed \$3,600.00 in compensation for loss of quiet enjoyment during the period of February 2017 and the end of the tenancy. She stated that during this time, there was a water leak in the rental unit that was creating a puddle outside of her apartment, as well as causing water leakage into the unit below.

She testified that the water issue remained a concern and continued to get worse, despite the Landlord being aware of the issue. She stated that she was only able to use the shower for very short periods of time, or the tenant downstairs would knock on her door and tell her that the water was leaking into the rental unit below.

The Tenant stated that she notified the Landlord regarding this issue and also requested a decrease in rent, which was denied. She stated that many professionals came to look at the issue and were unable to determine the cause or come up with solutions. She had a plumber friend look at the issue and determine the cause, which she relayed to the Landlord, but stated it was still not resolved.

The Tenant provided testimony that at one point a hole was cut into the wall to her rental unit was to look for the cause of the problem. This hole remained open for approximately 6 weeks, during which time her bathroom was open to the hallway outside, creating a lack of privacy for the Tenant.

As the Landlord advised the Tenant that the water leakage may be due to mis-use of the shower curtain, the Tenant stated that this was not the case as she was very careful with placement of the shower curtain. She also noted that the water was not leaking into the bathroom, but instead outside of the rental unit, as well as into the suite below.

The Landlord testified that there was water leaking into the hallway. The Landlord stated that the issue was originally thought to be located in the kitchen, so the dishwasher was replaced. However, when the issue continued, the Landlord arranged for contractors to attend the rental unit to assess.

The Landlord stated that the contractors did not locate any plumbing or mechanical issues, so it was determined that the issue may have resulted from improper use of the shower/shower curtain.

The Landlord submitted a plumbing invoice and statement from the plumbing company into evidence. The statement, dated November 22, 2017, states that they inspected the hallway water damage, opened the wall in two areas and noted no evidence of water or dampness. The statement further notes the following:

'The walls behind the tile appeared to be dry, no dampness in the insulation, no dampness coming from above the suite, and the only evidence of dampness and water damage was coming from the end of the bathtub opposite the drain, which has our Technician drawing the conclusion that any water damage that is occurring is not coming from a Plumbing issue.' (Reproduced as written)

The invoice, dated December 29, 2017, notes that an inspection was conducted, and holes cut in the drywall. The Landlord provided testimony that the holes in the drywall did not allow others

to see into the Tenant's rental unit. She stated that the Landlord first became aware of the water issue in October 2017, when the first maintenance request came in from the Tenant.

The Landlord submitted a photo of the holes cut into the drywall from the hallway outside of the rental unit. They also submitted a photo of the pipes under the bathtub, noting that they were observed for 2 weeks with no sign of leaking.

The Landlord testified that there have been no issues with water leaking since the Tenant moved out.

The Tenant stated that she moved out due to not being able to enjoy the rental unit during the time she resided there. She noted that she experienced a loss of quiet enjoyment due to the stress caused from the water issues that made it difficult to use the shower and caused disturbances from neighbours who were upset about the leaking water. The Tenant testified that she is claiming \$3,600.00 which she calculated as 10-20% of the rent paid during the 9-month period that the water leaking was a concern.

Analysis

I refer to the testimony of both parties, as well as the documentary evidence of the Landlord to determine, on a balance of probabilities, whether the Tenant is entitled to monetary compensation.

As for the Tenant's claim for the return of the security deposit, I accept the Landlord's evidence of an agreement between themselves and the co-tenant. The agreement shows that the co-tenant agreed that the Landlord could retain the full security deposit, as well as that additional compensation was paid for repairs and other damages.

Residential Tenancy Policy Guideline 13: Rights and Responsibilities of Co-Tenants provides a definition for "co-tenants" as two or more people under the same tenancy agreement.

Regardless of whether the co-tenant resided in the rental unit for the duration of the tenancy, both tenants remain responsible for the rental unit until the end of the tenancy. The tenancy agreement submitted into evidence names two parties as tenants, which was also confirmed by the Landlord and the Tenant during the hearing.

Policy Guideline 13 further clarifies that co-tenants are jointly and severally liable, meaning that one or both tenants can agree to damages or agree to the landlord withholding the security deposit.

As the co-tenant provided permission for the security deposit to be retained by the Landlord,

and paid additional damages claimed by the Landlord, I find that the security deposit has already been dealt with in accordance with Section 38(4) of the *Act*.

As such, I find that the security deposit has already been resolved between the parties. Therefore, I decline to award the Tenant the return of any amount from the security deposit.

The Tenant has also claimed for compensation in the amount of \$3,600.00 for loss of quiet enjoyment due to water issues during her tenancy. I note that in accordance with rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. As such, I find that the Tenant must provide sufficient evidence to determine that she is entitled to compensation.

The parties were in agreement that there was a water leakage issue during the tenancy. However, the parties were not in agreement as to the cause or duration of the issue. When parties to a Dispute Resolution proceeding provide conflicting testimony, it is up to the party with the onus to provide sufficient evidence to establish that the issues occurred as stated.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- 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 Tenant claimed a loss of quiet enjoyment, as stated in Section 28 of the *Act*, as well as that the Landlord breached Section 32 of the *Act*, regarding their responsibility to maintain and repair the rental unit.

I find the report from the plumber to be compelling evidence that there were no plumbing issues found, despite observing the pipes through holes cut in the drywall. I accept the evidence and testimony of both parties that confirms there was water leaking outside the Tenant's rental unit. However, I do not find sufficient evidence to establish that the water leak was caused from the Landlord breaching the *Act*.

The Tenant claimed that other residents of the rental building could see into her bathroom due to large holes in the wall that remained for approximately 6 weeks. The Landlord submitted photos of the holes that are covered up with tape and a material that blocked the openings. Although the holes in the wall were likely inconvenient, I find that I cannot establish how long the holes were present and do not find evidence before me to confirm that they were left open into the rental unit, creating a lack of privacy for the Tenant.

Therefore, due to insufficient evidence, and a failure to prove the Landlord's breach of the *Act*, I dismiss the Tenant's claim for compensation.

Conclusion

The Tenant's Application is dismissed, 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: November 02, 2018

Residential Tenancy Branch