



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, RR

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution, filed on August 19, 2018, wherein the Tenant requested a rent reduction pursuant to sections 27 and 65(1) of the *Act*, monetary compensation from the Landlord for an alleged breach of her right to quiet enjoyment pursuant to section 28 of the *Act*, and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on October 9, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to sections 27, 28 and 65 of the *Act*?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began November 15, 2016. The agreement provided that the rent included

parking for one vehicle. The agreement further provided that the Tenant paid \$150.00 as a key fob deposit.

The Tenant testified that when she first moved in she was provided a visitor parking pass whenever she requested one from the concierge. The Tenant testified that at some point in time in February or March 2018 the policy changed because Tenant's were getting tickets and their cars were being towed (due to the fact the on street parking was a maximum of three hours). She claimed that at that time every other resident in the building was issued a temporary parking pass at that time and that the Landlord refused to provide her with one.

The Tenant claimed that her friends have to pay for parking until 7:00 p.m. until it becomes free. The Tenant stated that she has guests approximately three times this year.

The Tenant claimed a rent reduction in the amount of \$200.00 per month from March 2018 to the present date based on the fact she no longer has access to the visitor parking.

The Tenant testified that in 2017 she purchased a second fob for \$75.00 from the Landlord's former property manager as she wanted another fob for her brother. She claimed that she travels frequently and wanted to give her brother an additional fob so he could check on the unit while she was away.

The Tenant stated that in February of 2018 she was informed the building was doing a "fob audit". The Tenant claimed that the Landlord took both of her fobs for approximately ½ hour but only returned one fob.

The Tenant sought a further rent reduction in the amount of \$300.00 per month for the lack of the second fob from March of 2018 to the present.

The Tenant also sought \$2,000.00 in compensation for loss of quiet enjoyment. She stated that the Landlord comes into her unit for "wrongful purposes", speaks to her guests when she is not there, and posts notices to end tenancy on her door.

In terms of the Tenant's claim that the Landlord enters the rental unit for "wrongful purposes" the Tenant alleged that on May 28, 2018 the Landlord came into the rental unit to take photos of the Tenant's personal belongings. She also stated that the Landlord comes there when she is not there and speaks to her guests.

In response to the Tenant's claims the Landlord testified as follows.

The Landlord confirmed that the Tenant was not provided a temporary visitors' pass. She stated that in the Spring of 2018 she was provided a "temporary visitors' pass" and it was at the owner's discretion whether to provide the temporary visitor's pass to the Tenants or not. The Landlord stated that she visits the building as well and therefore uses the visitors pass for her own purposes.

The Landlord stated that there was no such thing as a "temporary visitor parking pass" at the beginning of the tenancy; she stated that she looked through the strata council minutes and could find no such mention.

The Landlord confirmed that in the Spring of 2018 she removed the two fobs from the Tenant for approximately ½ an hour as they were doing a "fob audit". She further confirmed that she took one of the fobs away from the Tenant and only returned one. The Landlord stated that the Tenant was only provided one fob at the beginning of the tenancy, and was provided a second one from the Landlord's former property manager, who did so without the Landlord's permission.

The Landlord stated that she did not return the Tenant's fob deposit as she believed the Tenant owed her "lots of money" and that it would be sorted out when the Tenant moves out. In written submissions provided by the Landlord the Landlord wrote:

"The reason that \$75 was not refunded is that tenant owed the landlord minimum 2 month rent for additional occupant that the tenants admitted that her son was an occupant of the unit at least Nov & Dec 2017 in earlier hearing."

In terms of the Tenant's claim for \$2,000.00 in monetary compensation for breach of quiet enjoyment the Landlord responded as follows. The Landlord denied attending the rental unit unannounced except on one occasion when she claimed she needed to talk to the building manager. She stated that she also needed to check to ensure that her key worked.

The Landlord further testified that she has never entered the rental unit without the Tenant's consent.

The Landlord confirmed that she gave the Tenant 24 hours' notice to enter the rental unit in May of 2018. She further confirmed that the Tenant accepted her notice. The

Landlord stated that the rental unit is a one bedroom and at that time the Landlord saw three beds in the unit, which is why she took photos.

The Landlord stated that she believes that the Tenant's son, or another person, is living in the rental unit.

Branch records confirm that the parties attended an earlier hearing at which time the Arbitrator found insufficient evidence to establish that the Tenant had another occupant residing in the rental unit. The file number for that Decision is noted on the unpublished cover page of this my Decision.

The Landlord claimed that she only went to the rental unit once, in the Spring of 2018, when the Tenant was not at the rental unit. The Landlord spoke with the Tenant's son, who invited her in and showed her that he was living there.

The Landlord also stated that prior to that she gave notice to enter the rental unit in late November 2017 as the Tenants' lease was set to expire on the 30th; again she noted that the Tenant accepted her entry notice.

I did not require any testimony or submissions from the Landlord regarding the Tenant's concerns about her posting notices to the rental unit door as that is an accepted method of service pursuant to section 89 of the *Act*.

In reply the Tenant stated that the Landlord has come to the rental unit "numerous times" and it wasn't just once to see if her key worked. The Tenant did not provide any specific dates or times of these alleged entries. The Tenant also noted that the Landlord never raised any concerns about her key not working until she gave her testimony at the hearing.

The Tenant submitted that the visitor parking is a common area, just like the pool and the gym, and the Landlord should not restrict her access to it, as she used to have access and now she doesn't.

The Tenant confirmed that she was only given one fob when she moved in. She confirmed that she received the second fob on March 18, 2017; she informed the previous agent that she needed the fob as she travels frequently. She also noted that the Agent accepted a deposit for this fob, and charged the Landlord \$75.00 for the second fob and it is simply not believable that the Landlord was unaware she had a second fob at the time.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

The Tenant seeks compensation pursuant to sections 27 and 65 of the *Residential Tenancy Act* alleging the Landlord has restricted her access to the visitor parking, as well as denying her use of her second fob.

Section 27 reads as follows:

- 27 (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

Section 65 provides as follows:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

- ...
- (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director
- ...

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Tenant alleged that she had access to the visitor parking in the past, and once visitor passes were provided to the property owners she no longer had such access. The Landlord claimed that there was no such temporary visitor parking in the past and that the owners have the discretion to provide the visitor pass to their tenants or not. The Landlord testified that she retained the visitor parking pass as she uses the pass when she attends the rental building.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am unable, based on the evidence before me to reconcile the parties' conflicting testimony about the Tenant's previous use of the visitor parking and I am therefore unable to conclude that the Tenant's access to the visitor parking has been restricted.

The tenancy agreement provided that the payment of rent included one parking stall. There is no mention of visitor parking in the tenancy agreement.

Based on the evidence before me I find that the Tenant has failed to provide sufficient evidence to support a finding that parking for her guests in the buildings' visitor's parking is a service or facility included in her tenancy. I therefore find the Tenant has failed to prove the Landlord breached section 27 of the *Act* by denying her use of the visitor parking pass.

Notably, the Tenant testified that her guests are able to pay for parking on the street until 7:00 p.m. after which parking is free. She also testified that she has had guests at the rental unit three times from January 2018 to the date of the hearing. As such, even in the event I had found her access to the visitor parking was restricted, the Tenant provided insufficient evidence of any financial loss to support her related monetary claim.

The evidence establishes that the Tenant's second fob was retained by the Landlord in March of 2018. The Tenant testified that she obtained a second fob for her brother to check on her rental unit while she travels. While this is likely convenient, I am unable to find that a second fob is a service or facility which is included in her tenancy agreement.

Additionally, I find she has also failed to provide sufficient evidence of any financial loss relating to the lack of access to a second fob.

Consequently, I deny her request for rent reduction in the amount of \$200.00 per month for the visitor parking, and \$300.00 per month for the fob, based on sections 27 and 65 of the *Act*.

Introduced in evidence by the Tenant was an invoice from March 18, 2017 confirming she paid **\$75.00** for the second fob. As the Landlord has refused to return the fob to the Tenant I find the Tenant is entitled to return of this amount.

The Tenant also seeks monetary compensation in the amount of \$2,000.00 claiming the Landlord breached her right to quiet enjoyment.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 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 Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28.

The Tenant alleged the Landlord entered the rental unit numerous times and for “wrongful purposes”. The only occasion for which she provided details was the Landlord’s attendance at the rental unit on May 28, 2018.

A Landlord may enter a rental unit monthly for inspections pursuant to section 29 of the *Act*. The evidence indicates the Landlord provided notice of entry pursuant to section 29 such that this entry was in accordance with the Landlord’s right to enter the rental unit.

I accept the Landlord’s evidence that she has provided proper notice of entry, and that she has not entered the rental unit contrary to the *Act*.

The evidence also confirms that the parties had a prior dispute regarding the Landlord’s allegation that the Tenant had another occupant residing in the rental unit. As such, I

find it was reasonable for the Landlord to take photos of the rental unit on May 28, 2018 as well as speaking with the Tenant's guests.

I find the Tenant has provided insufficient evidence to support a finding that the Landlord's actions breached her right to quiet enjoyment.

As noted, posting to the rental unit door is an acceptable means of service pursuant to section 89 of the *Act*.

For these reasons I dismiss the Tenant's claim for compensation in the amount of \$2,000.00 pursuant to section 28.

Having been largely unsuccessful, the Tenant is not entitled to recover her filing fee.

Conclusion

The Tenant is entitled to the sum of **\$75.00** representing the amount she paid for the second fob which was subsequently retained by the Landlord. Pursuant to section 72 of the *Act* the Tenant may reduce her next month's rent by \$75.00 as recovery of this amount.

The balance of the Tenant's claim is dismissed for the reasons set out in this my Decision.

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 8, 2018

Residential Tenancy Branch