



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ERP MNDC PSF LAT OLC

Introduction

This hearing was convened in response to an application by the tenant for emergency repairs (toilet), a Monetary Order for loss of use of a toilet, return of security deposit and an Order to restrict or set conditions on the landlord's right to enter the rental unit.

Both parties attended the hearing. The landlord acknowledged receiving solely the tenant's application in this matter and specifically denied receiving any of the tenant's claimed digital video evidence which the tenant claimed to have sent the landlord by e-mail. The tenant acknowledged receiving the bulk of the landlord's evidence by e-mail. The parties were further provided opportunity to present all relevant evidence in testimony in respect to the tenant's claims, ask questions and fully participate in the conference call hearing to the best of their ability. The parties were also provided opportunity to mutually resolve their dispute, to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I accepted solely evidence provided to this proceeding and the parties pursuant to the Rules of Procedures. Only such evidence has been utilized in the making of this Decision.

Preliminary matters

The tenancy ended December 06, 2018 upon the tenant vacating via involvement of a bailiff. The tenant confirmed to me that the relevant remaining items in dispute are solely their claim for loss of use of the toilet and to recover their security deposit. The tenant's claims for emergency repairs and to set conditions on the landlord's right to enter the rental unit are moot.

Issue(s) to be Decided

Is the tenant entitled to compensation in the monetary amount claimed for loss of use of a toilet?
Is the tenant entitled to compensation for a breach by the landlord of their right to enter the rental unit?

Background and Evidence

I do not have benefit of the tenancy agreement; however the parties agreed the payable rent during the tenancy was \$1100.00.

The tenant testified to experiencing a loss of use of the toilet when it became plugged in October 2018. After what they testified was several days, they alerted the landlord and the landlord attended to the plugged toilet which the landlord described as having had a t-shirt flushed through the septic system. The landlord provided proof from a plumbing contractor stating same. The parties disagreed with the timeline events leading to the eventual resolution of the plugged toilet; however the parties agreed that the tenant suffered a loss of use of the toilet for at least 3 days from October 15 to 17, 2018 and again for 1 day October 20, 2018. The parties further agreed that the toilet was again taken off for a remedy another 3 days November 11 to 13, 2018. The tenant testified that for all other times the toilet *may have been unavailable* from the outset of the plugging incident, they were not actually occupying the rental unit.

The tenant claims that the landlord entered their rental unit without first providing written notice to access the rental unit. The landlord agreed they entered the rental unit on solely one occasion in July 2018 when they surmised there may be running water left unattended in the unit during the tenant's absence. They testified it was a potentially urgent situation requiring their timely intervention. The landlord provided evidence that on different occasions they attempted to alert the tenant by written notice of their need to access the unit to assess the work of their plumbing contractor, however the tenant was not staying in the rental unit and therefore they ultimately entered the unit as required by their notice. The tenant testified they have video evidence of breaches of this nature by the landlord, however did not provide such evidence to the landlord usable in this matter.

The tenant sought return of their security deposit however testified in agreement with the landlord that the tenant has not provided the landlord with a written forwarding address for its return; and, the landlord did not agree to mutually and conclusively resolve this matter without first receiving the tenant's forwarding address.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On a balance of probabilities I find the undisputed evidence in this matter is that during the tenancy the tenant was absent the use of a toilet for a sum of 7 days. In determining the amount by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation, the degree it affected the tenant's ability to use their premises and the length of time over which the situation existed. As a result I find the tenant is entitled to

some compensation for the loss, which I set at \$15.00 per day for the 7 days for a sum compensation amount of **\$105.00**, without leave to reapply.

I find that **Section 29** of the Act guides a landlord's right to enter the rental unit only as prescribed. I accept the landlord's version of events leading them to enter the unit on one occasion in July 2018 without notice during the tenant's absence, for the purpose of a perceived emergency to protect property. I find that the tenant has not provided sufficient evidence that the landlord has, on different occasions, entered the rental unit without ascribing to Section 29 of the Act. As a result, even if I were to find the landlord breached Section 29 of the Act, the tenant has vacated and there is no need for the landlord's right pursuant to Section 29 to be restricted or made conditional. I **dismiss** this portion of the tenant's claim.

The parties were apprised as to the requirements of the Act guiding the strict administration of a security deposit and the consequences if a party does not meet their part of the process. The parties were guided to consult a Branch Information Officer and the respective Policy Guideline on deposits. The parties are herein further guided to consult Section 38 of the Act.

I **grant** the tenant a monetary Order under Section 67 of the Act for the amount of **\$105.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in the above terms. I have dismissed all other claims by the tenant without liberty to reapply.

This Decision is final and binding.

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: December 17, 2018

Residential Tenancy Branch