Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with the tenant's application for a monetary order for:

i) compensation for labour undertaken in association with repairs to the unit ($200.00);

ii) compensation in the approximate amount of 50% of eight months' rent (January to August 2008) in respect to the general unsuitability of the unit ($3,000.00);

iii) compensation for loss of quiet enjoyment ($500.00);

iv) compensation in the amount of two months' rent in relation to the landlord's alleged failure to use the unit for personal use following an end of tenancy for landlord's use of property.

Both parties including one witness for the landlord attended and were represented in the hearing and give affirmed testimony. The parties had an opportunity to be heard and each of the two representatives provided closing statements before the hearing ended.

Issue to be Decided

- Whether the tenant is entitled to a monetary order under the *Act*

Preliminary Matters

At the outset of the hearing, counsel for the landlord challenged the qualifications of the tenants' advocate to represent the tenants in these proceedings. For his part, the

tenants' advocate objected to the late submission of evidence by counsel for the landlord.

As to counsel's challenge of the advocate's qualifications, Rule 8.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

> **8.3 Party may be represented or assisted**
>
> A party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

Pursuant to the above, I am satisfied there was no administrative or procedural unfairness arising from the participation of the advocate.

Where it concerns the advocate's objection to the late submission of evidence by the landlord's counsel, the objection was on the basis that counsel had ample opportunity to make his submission in a timely manner. The subject evidence is not voluminous, the advocate received a copy of it before the hearing and did not argue that he had insufficient time to review and consider it. Accordingly, I am satisfied that the late submission has not prejudiced the tenants and I find there is no administrative or procedural unfairness in considering it.

Background / Evidence / Analysis

This month-to-month tenancy commenced on or about January 13, 2008 and ended on or about September 30, 2008. Monthly rent was payable in the amount of $800.00.

Issue #1 ($200.00)

The tenants claim they undertook some work in the bathroom, and specifically with regard to repairing plumbing, re-seating the toilet, leveling the floor and replacing the

entire flooring surface. While the tenants confirmed there was no written agreement with the landlord, the tenants asserted there was an understanding reached with the landlord whereby in exchange for labour, he would either "reimburse" them, or authorize them to deduct certain monies from the rent. The landlord disputes that there was any such understanding. The tenants submitted various photographs of the unit, including what appear to be some *before* and *after* pictures of the bathroom floor. I find these are inconclusive as to the issue at hand. For his part, the landlord submitted a receipt dated May 1, 2008 for payment of $250.00 to an individual for labour described as "cleaned wash room floor, supply and install new floor and baseboard."

In the absence of any persuasive oral testimony, photographic or other documentary evidence to the contrary, I am unable to conclude that there was any agreement between the parties concerning whether the tenants would undertake repairs to the bathroom, or whether in exchange for any labour the landlord would offer rent concessions. I therefore dismiss this aspect of the tenants' claim.

Issue #2 ($3,000.00)

The tenant describes this aspect of her claim as compensation for the broadly unsuitable aspects of living in the unit which included problematic relations with the upstairs tenants. In part, this appears to be a claim for loss of quiet enjoyment, which is addressed more specifically below.

Section 32 of the *Act* speaks to **Landlord and tenant obligations to repair and maintain**. In particular, section 32(1) of the *Act* states:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> > (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenants have not presented a convincing argument that the landlord failed to comply with “health, safety and housing standards” or that the subject unit fell short of being “suitable for occupation.”

Further, section 27 of the *Act* addresses **Terminating or restricting services or facilities,** in part, 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.

The narrative submitted by the tenants which sets out to describe disputes with the other tenants around access to on-site laundry facilities, is insufficient for me to conclude that the landlord breached the above provisions in the *Act.*

Further to all of the above information, there is no evidence of a move-in inspection and report, or a move-out inspection and report. Neither is there evidence before me to suggest that at the time when the tenancy ended, there was unfinished business identified by either party related to rent in arrears or return of the security deposit.

While there were documented difficulties in their relationship with the upstairs tenants, efforts were made between the parties to resolve these. Further, it appears there was mutual animosity between the two sets of tenants and that the landlord received complaints from both sets of tenants about each other. In the absence of any cogent argument in support of entitlement, I must dismiss this aspect of the tenant’s claim.

Issue #3 ($500.00)

More specifically this aspect of the tenants' application presents as a claim for compensation for "loss of quiet enjoyment" arising in part, from disturbance caused by the other tenants, and "for the landlord's high handed conduct throughout the tenancy."

Residential Tenancy Policy Guideline #6 addresses the Right to Quiet Enjoyment, in part, as follows:

> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. 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. Such interference might include serious examples of:
>
> - entering the rental premises frequently, or without notice or permission;
> - unreasonable and ongoing noise;
> - persecution and intimidation;
> - refusing the tenant access to parts of the rental premises;
> - preventing the tenant from having guests without cause;
> - intentionally removing or restricting services, or failing to pay bills so that services are cut off;
> - forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,

- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

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

I have already noted above that there were occasional difficulties between the applicant tenants and the upstairs tenants. The tenants have provided insufficient evidence to support a claim that any of these difficulties were "serious examples" of interference with their right to quiet enjoyment or that they led to anything greater than temporary discomfort.

As to the description of the landlord's conduct as "high handed," there is no persuasive evidence that the landlord's conduct fell within the range of behaviours described above. In the result, I find there is insufficient evidence to support an entitlement for compensation due to loss of quiet enjoyment.

Issue #4 ($1,600.00)

This appears to represent the most emotionally charged aspect of the tenants' claim.

The tenancy ended as a result of the landlord's issuance of a 2 month notice to end tenancy for landlord's use of property. The tenants disputed the landlord's notice. Arising from this, a hearing was held on September 18, 2008. In his decision dated September 19, 2008, the dispute resolution officer made a finding that the landlord ended the tenancy in good faith. Specifically, the dispute resolution officer was satisfied that the landlord had ended the tenancy in order that his son could move in.

After an end to tenancy following the landlord's issuance of a 2 month notice for landlord's use of property, if the landlord does not use the premises for the stated purpose(s), section 51 of the *Act* provides, in part, as follows:

51(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this present hearing the landlord's son testified that he had indeed moved into the unit around mid-October 2008, and that he presently resides there with two others. Evidence in support of this position took the form of a copy of the son's driver's licence with the ICBC address amendment card attached, showing the address of the subject rental unit. Additionally, the landlord's evidence included a copy of a college registration statement showing the son's name and the address of the subject rental unit.

To dispute the landlord's son's assertion that he currently resides in the subject rental unit, the tenant submitted into evidence two letters: one from a "friend and relative" of the tenant dated January 4, 2009 and unsigned; the other, undated and signed by two individuals identified as "a neighbour." Further, the tenants submitted a photo taken of a piece of mail bearing the address of the subject rental unit but the name of someone other than the landlord's son.

The burden of proof is on the party making the claim. When one party seeks to provide evidence to support facts in one way, and the other party attempts to provide equally probable evidence to support facts another way, the party making the claim has not met the burden of proof on a balance of probabilities and the claim fails.

After considering all of the evidence presented, I find on a balance of probabilities that the landlord's son did move into the unit in mid-October and continues presently to

reside there. No evidence has been presented to support a proposition that he does not intend to continue to reside there for a reasonable period of time. Accordingly, I dismiss this aspect of the tenant's claim.

Conclusion

I hereby dismiss all aspects of the tenants' application.

Dated: January 28, 2009