



Dispute Resolution Services

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

Decision

Dispute Codes:

OLC RP RR MNDC O FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. Both parties gave affirmed evidence and this Application proceeded on its merits.

This is the Tenant’s application for:

- A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, in the amount of \$1,318.80;
- An order that the Landlord comply with the Act, regulation or tenancy agreement;
- An order for repairs to the rental unit;
- An order allowing the Tenants to reduce the rent for repairs, services or facilities agreed upon but not provided;
- Other; and
- An order that the Tenant recover the cost of the fee paid under Section 59 of the Act, from the Landlord.

Issue(s) to be Decided

- (1) Has there been a breach by the Landlord of the Act or the tenancy agreement that would entitle the Tenants to a monetary order under section 67 of the Act?
- (2) Should the Landlord be ordered to comply with the Act or tenancy agreement?
- (3) Is an order for repairs to the rental unit required?
- (4) Has there been a reduction in the value of the tenancy agreement such that the Tenant is entitled to an order for rent abatement or reduction?

The Tenants have marked off “Other” on their Application for Dispute Resolution, however there were no issues raised by the Tenants that did not fall within the issues outlined above. I therefore dismiss the Tenants’ application with respect to “Other”.

Background and Evidence

The Tenants entered into a month-to-month tenancy agreement commencing December 15, 2002. The rental unit is located in the lower level of a house. The upper level is occupied by another tenant who acts as the agent for the Landlord. The monthly rent is \$780.00 and it is due on the first day of the month.

The Tenants provided copies of letters dated November 27, 2008 and December 15, 2008, requesting a copy of the Tenancy Agreement for their rental unit. The Tenants testified that the Landlord did not provide them with a copy of the Tenancy Agreement when they moved in, as required by the Act. The Tenants testified that the Landlord had not provided a copy of the Move-In Inspection Report either, and asked the Landlord to provide a copy. The Landlord testified that he can not locate a copy of the Tenancy Agreement or Move-In Inspection Report and therefore he cannot provide the Tenants with copies of those documents.

The Tenants testified that they were at a disadvantage not having a copy of the Tenancy Agreement because they relied on it with respect to a storage area in the furnace room, the exclusive use of which they allege is included in their rent. The Landlord disputed that a such a provision exists in the Tenancy Agreement. He stated that the use of the furnace room for the Tenants' storage was not included in the rent and that the Tenancy Agreement was a standard one, with standard terms. The Landlord testified that the furnace room is common property and that he has to have access to it. He stated that the Tenants had left their belongings in such a manner that it was not possible for him to access the furnace and that he had asked them to tidy it up.

The Tenants re-stated that the storage area in the furnace room was for their use and that the Landlord was storing some of his items there (doors, old paint cans, screens, windows).

The Tenants testified that the Landlord had entered their rental unit without notice. The Landlord denied this allegation. He stated that he entered the furnace room in the basement while he was there repairing some drywall and did not enter the Tenants' rental unit.

The Tenants testified that they were uncomfortable with the lack of privacy and lack of exclusive use of the storage room and decided to have an outdoor storage unit built in the carport to store their items. The Tenants hired workmen to build the structure. The Tenants did not ask for the Landlord's permission to build the structure before starting to have it constructed. When the Landlord discovered the workmen on the property erecting the frame for the storage unit, he refused to allow the structure to stand and demanded that the Tenants remove it.

The Tenants provided a hand-drawn sketch, indicating that the Landlord's stored items took up approximately 55 square feet of space. The Tenants have researched local storage facilities and provided evidence that similar storage units are available at a cost

of \$54.95 per month. The Tenants are asking for compensation for 24 months at the rate of \$54.95 per month for the loss of storage under the Tenancy Agreement.

The Landlord testified that the use of the furnace room by the Tenants for storage did not become an issue until some time in October of 2008. The Tenants and the Landlord agreed that they both used the area for storage from December 15, 2002 until October, 2008 without conflict.

The Tenants testified that an area of the basement is being painted. The Tenants testified that the painters told the Tenants there is fiberglass insulation in the basement that is not properly covered. The Tenants did not provide photographs to show the amount of insulation that was exposed, to what degree it was exposed, or the location of the exposed fiberglass.

Analysis

This is the Tenants' application. The Tenants have the burden of proving both the fact and the amount of damage or loss before recovering damages or compensation for that loss. This flows from the general rule that the burden of proof falls upon the Applicants (in this case, the Tenants) and not upon the Respondent (the Landlord).

Tenants' application for a monetary order under Section 67 of the Act

The Landlord and Tenants disagree with respect to whether or not the storage area in the furnace room was for the Tenants' use only, and included in the monthly rent. I do not have a copy of the Tenancy Agreement in order to confirm or deny the Tenants' claim. This is not through any fault of the Tenants. The Tenants were not provided with a copy of the Tenancy Agreement within 21 days of signing the Agreement, as is required by the Act. The Tenants recently requested a copy of the Tenancy Agreement from the Landlord, but the Landlord has misplaced the Agreement.

However, it is clear by the evidence of both parties that the Tenants had use of the storage space, and still have use of the storage space. It is also clear from the

evidence of both parties that the Landlord had materials stored in the furnace room when the Tenants first took occupancy of the rental unit, and the Landlord continues to store materials in the furnace room. The question of who has a right to use the furnace room for storage was not an issue until October, 2008, when the Landlord asked the Tenants to tidy the storage room. I therefore find that the storage area was a shared storage area between the Tenant and the Landlord, and not exclusively part of the Tenants' rental unit.

Section 67 of the Act allows for compensation if damage or loss results from a party not complying with the Act, regulations or tenancy agreement. The Tenants ask for a monetary order for the equivalent of 24 months of storage at \$54.95 per month, totaling \$1,318.30. The Tenants have provided no factual basis for me to make this Order, as they have had use of the storage area and did not dispute the Landlord's right to use it until October of 2008, almost 6 years after they took possession of the unit. I therefore dismiss this part of the Tenants' application.

Tenants' application for an Order that the Landlord comply with the Act

Section 13(3) of the Act states:

“Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.”

Section 23 of the Act states, in part:

“(1) The landlord and tenant together must inspect the condition of the rental unit of the day the tenant is entitled to possession of the rental unit or on another mutually agreed day;

(5) Both the landlord and the tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.”

Part 3, paragraph 18 of the Regulations states, in part:

“18 (1) the landlord must give the tenant a copy of the signed condition inspection report

(a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed.

The Landlord is not able to produce a copy of the signed Tenancy Agreement or Move-In Condition Report and therefore is not able to comply with the Act and I decline to make an order to do so. However, I make this notation for the Landlord's information for future tenancies. I have included the pamphlet "A Guide for Landlords and Tenants in British Columbia" with this Decision, for the information of both parties.

Tenants' application for an Order that the Landlord make repairs to rental unit

Section 32 of the Act states that the Landlord must provide and maintain premises that meet health, safety and housing standards required by law and make it reasonably suitable for occupancy.

The Tenants did not provide sufficient evidence that uncovered fiberglass insulation was making the unit unsafe, unhealthy or unsuitable for occupancy. I find the Tenants have failed to establish that they suffered any damage, even if there was unsafe, unhealthy or unsuitable living conditions due to the uncovered fiberglass insulation. I dismiss this part of the Tenants' claim.

Tenants' application for Rent Reduction

Section 65 of the Act states that a dispute resolution officer may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of the Tenancy Agreement. Based on the oral evidence of the Tenants and the Landlord, and the written evidence on the case file, I find there is no reduction in the value of the Tenancy Agreement and I dismiss this portion of the Tenants' application.

Conclusion

I find the Tenants have failed to establish a claim under Sections 67 or 62(7) and therefore I dismiss their application to recover the filing fee from the Landlord for the cost of this application under Section 72(1) of the Act.

January 26, 2009
