DECISION

Dispute Codes: ERP, RP, RR, MNR, FF, CNC, MNDC,CNC, O

Introduction

This hearing dealt with an application by the tenant 1) for a monetary order for the costs of emergency repairs and money owed under the Act; 2) for the landlord to make repairs to the unit; 3) to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and 4) to cancel the notice to end tenancy.

Preliminary Matter

The landlord said that she did not serve the tenant with the evidence package that was received by the Residential Tenancy Branch on February 19, 2009. The documents contained in this package are therefore not admitted as evidence for this hearing.

Issues to be Decided

1. Whether the tenant is entitled to a monetary order for the costs of emergency repairs?
2. Whether there are further repairs to be made in the rental unit?
3. Whether the tenant is entitled to a rent reduction for facilities agreed upon but not provided?
4. Whether the landlord has established grounds to end this tenancy?

Analysis

Issue #1 – Whether the tenant is entitled to a monetary order for the costs of emergency repairs?

The Electrical System

The tenant said that on December 12, she asked an electrician, PK, to check on the electrical system in her unit. PK made a list of the deficiencies and telephoned the City of Vancouver. As a result, an electrical inspector from the City of Vancouver attended the tenant's unit. During this inspection, the tenant went through this list with the inspector and the inspector verbally confirmed the deficiencies. The tenant then asked PK to conduct repair of some of the deficiencies. The tenant submitted a receipt from PK dated December 24, 2008 for the amount of $750.00. The tenant is seeking recovery of this amount as cost of emergency repair.

Section 33 of the *Residential Tenancy Act* states that a tenant may complete emergency repairs only when the tenant has1) made at least two attempts to contact the landlord for emergency repairs and 2) allowed the landlord reasonable time to make the repairs; and if the above stated conditions are not met, then the tenant is not entitled to any reimbursement from the landlord. In this case, the tenant said that she did not inform the landlord of the electrical deficiencies before or during the process of having them repaired. Based on the above, I dismiss the tenant's claim for $750.00 as cost of emergency repair.

Repainting Ceiling

The tenant said that there was water damage to the ceiling of her unit and the paint was starting to peel off. On June 20, when she informed the landlord of this deficiency, the landlord declined to repaint the ceiling. The tenant thought that if she pushed the landlord too much, the landlord would not do a proper job in repainting the ceiling. Therefore, she hired a professional contractor to do the job herself. This professional contractor started on July 11 and completed the repainting of the ceiling on August 31. The tenant submitted a receipt dated August 2008 from WCG for the amount of $1250.00. She is seeking recovery of this amount as cost of emergency repair.

The landlord said that there was never a leak in the building. She explained that the building is an old heritage building and the ceiling in all of the units is made of bumpy old plasters. Furthermore, when the tenant moved in, she signed a tenancy agreement which offered the tenant a $250.00 allowance for painting. In April of 2008, the tenant claimed and received this allowance without providing any receipts. The landlord further contended that repainting the ceiling was not an emergency.

Section 33 of the *Act* defines emergency repair as repair that is 1) urgent; 2) necessary for the health and safety of anyone; and 3) made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or pluming fixtures, the primary heating system, damaged or defective locks that give access to a rental unit or the electrical systems. In this case, I find the repainting of the ceiling as described by the parties not to fall within this definition. The tenant is therefore not entitled to reimbursement for the cost of repainting the ceiling as cost of emergency repair. Based on the above, I dismiss the tenant's claim for $1250.00 as cost for emergency repair.

Issue #2 – Whether there are further repairs to be made in the rental unit?

The tenant said that all necessary repairs in her unit were completed with exception of the kitchen sink which still backed up. I note that in an inspection report dated January 28, 2008 by the City of Vancouver, an inspector stated the following, "Kitchen sink water backing up was also mentioned by the tenant but on both inspections I didn't see this happen." The landlord said that she was prepared to deal with this repair should the problem arises and when the tenant informs her of it. The landlord should then be given the opportunity and reasonable amount of time to assess and complete the reported repair. Based on the above, I dismiss the tenant's application for an order for the landlord to repair the kitchen sink with leave to re-apply. The tenant may re-apply for such

an order should the landlord fails to complete the necessary repair within a reasonable amount of time after being informed by the tenant.

Issue #3 – Whether the tenant is entitled to a rent reduction for facilities agreed upon but not provided?

The tenant said that on January 18, she informed the landlord that the heating system was malfunctioning in her unit. The landlord did not dispute that the heating system in the tenant's unit was malfunctioning at that time. On January 22, the landlord hired KDE to address the problem. On January 23, the landlord supplied the tenant with a portable heater. On January 30, KDE completed the repair and heat was restored in the tenant's unit.

The tenant acknowledged receiving the heater but said that she had to move it from room to room to keep warm. She added that during the period of the repair, there were trades people coming in and out of her unit. As a result, she felt stressed and her work was affected. The tenant is seeking rent reduction of ½ month's rent in the amount of $425.00.

Based on the above, I allow a claim of 25% rent reduction for the 12 day period from January 18 to 30 for a total of $81.60. The tenant is also entitled to recovery of the $50.00 filing fee. I grant the tenant an order under section 67 for the balance due of $131.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Issue #4 – Whether the landlord has established grounds to end this tenancy?

The landlord said that a clause on page 1 of the tenancy agreement stipulates that the tenancy does not include a parking space. However, since the inception the tenancy in March of 2008, the tenant had been parking at the loading zone of the building. This had caused difficulties with access to the building by other

occupants, trades people and delivery people. As well, the manager of the adjacent apartment building had complained about the tenant's car blocking their access to the garbage bin. On June 24, the landlord issued a warning letter to the tenant asking her to stop parking at the loading zone. The tenant continued to park there. On July 7, the landlord issued a second warning letter to the tenant. In addition, both the landlord and the apartment manager next door put up "no parking" signs in front of the loading zone. Despite these warnings, the tenant continued to park at the loading zone. Recently, the tenant started to park at the landlord's space.

The tenant did not dispute that 1) the tenancy agreement does not include a parking space; 2) she had been parking at the loading zone of the building; 3) she did receive two warning letters from the landlord but continued to park at the loading zone; and 4) she had also been parking at the landlord's space. The tenant explained that she had the right to park at the loading zone because she has a commercial parking permit. As for parking at the landlord's space, the tenant thought that the space belonged to a tenant who had vacated. The tenant admitted to not having sought the landlord's permission to park at either one of these spaces.

Based on the above, I find that the tenant has not complied with a term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gave written notice to do so. While I find the term breached by the tenant not to be a material one, I have considered that the situation has been persistent and long lasting. I therefore find that the landlord has established grounds that the tenant has significantly interfered with or unreasonably disturbed another occupant and the landlord and therefore the tenancy should end. Accordingly, I dismiss the tenant's application to cancel the notice to end tenancy.

During the hearing, the landlord requested an order of possession. I find that she is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Dated February 20, 2009.