



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

RR, MNR, MND, MNSD, MT, FF

Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution, in which the Landlord made application for a monetary Order for damage to the rental unit, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant made application for more time to set aside a Notice to End Tenancy and for authority to reduce her rent in compensation for repairs, services, or facilities agreed upon but not provided. The Tenant withdrew her application for more time to set aside the Notice to End Tenancy, as the rental unit has been vacated.

The original hearing was reconvened as there was insufficient time to conclude the hearing on March 31, 2009.

Both parties were represented at the hearing on March 31, 2009. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant did not attend the hearing on June 08, 2009, and the hearing was conducted in her absence.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution, is whether the Landlord is entitled to a monetary Order for damage to the rental unit; a monetary Order for unpaid rent; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, is whether the Tenant is entitled to reduce her rent in compensation for being without hydro for a portion of the tenancy and for several deficiencies in the rental unit.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2008; that the Tenant occupied the upper suite of a residential complex that has an upper and lower suite; that the Tenant was required to pay monthly rent of \$1,300.00; that hydro and other utilities were included in the rent; that the Tenant paid a security deposit of \$400.00 on September 01, 2008; that the Tenant paid a pet damage deposit of \$275.00 on August 01, 2008; and that a Condition Inspection Report was not completed at the beginning of the tenancy.

At the hearing on March 31, 2009, the female Landlord stated that on February 04, 2009 they contacted BC Hydro and asked to close their account for the residential complex, as the Tenants in both rental units were not paying their rent and the Landlords had insufficient funds to pay their mortgage and the hydro bill. She stated that BC Hydro advised them that hydro service at the residential complex would continue, providing one of the tenants put the hydro bill in their name, as there is only one hydro meter for the residential complex. She stated that she advised the occupants of both rental units that they would have to make arrangements to share the hydro bill, although she told them she would put the service back into her name if their rent was paid.

At the hearing on June 08, 2009, the female Landlord stated that BC Hydro assured them that the hydro would not be disconnected during the winter months and that she advised the Tenants that the hydro would not be disconnected. She contends that the Tenants vacated the rental unit solely because they could not pay their rent.

The Tenant stated that she contacted the occupants of the rental unit below her but they were not willing to put the hydro in their name or to come to any agreement regarding paying the hydro. She stated that she phoned BC Hydro, who advised her that the service would be terminated if it was not put into someone else's name. She stated that she was unable to put the service in her own name due to her credit history, so her brother-in-law agreed to put the service into his name.

The Tenant stated that when she received the first hydro bill she received a bill, in the amount of \$2,286.70, which included the billing period between October 01, 2008 and February 22, 2008. The Landlord stated that she has never received a copy of the bill and she does not know how much is owing to BC Hydro. The Tenant stated that she did not serve a copy of the bill to the Landlords, as the male Landlord had previously told her he didn't want anything to do with the bill.

After determining that the hydro bill was essential evidence that should be submitted in evidence and served on the Landlord, I granted the Tenant three days to submit the evidence to me and to serve the Landlord, and I granted the Landlord ten days to serve rebuttal evidence, at which time I intended to make my decision based on the written submissions of both parties, without reconvening the hearing. The Landlord strongly objected to any delay in the proceedings, as the delay constituted a financial hardship for her. I subsequently withdrew the time limits I placed on submitting the hydro bill, as the hearing was being reconvened due to our inability to conclude the hearing within the allotted time. Both parties were advised that any evidence they wish to submit must be submitted five business days before the reconvened hearing.

The Tenant did not submit a copy of the hydro bill.

The Landlord and the Tenant agree that the Tenant did not pay \$500.00 in rent for January and \$1,300.00 in rent for February of 2009.

The Landlord and the Tenant agree that the Tenant gave the Landlord written notice, on February 17, 2009, of her intent to vacate the rental unit on March 01, 2009. The Landlord is seeking compensation, in the amount of \$1,300.00, in loss of revenue that she contends is due because the Tenant did not provide one full month's notice of her intent to vacate the rental unit.

The Tenant stated that she gave the notice to vacate the rental unit because she could not come to an agreement with the Landlords regarding the hydro bill, because the occupants of the rental unit below her would not agree to share the bill and she did not want to pay for their hydro, and because her brother-in-law did not want to keep the hydro bill in his name for any extended period.

The Landlord and the Tenant agree that the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent on February 07, 2009, which advised her that she must vacate the rental unit by February 14, 2009.

The Landlord is claiming compensation, in the amount of \$140.00, to repair a broken window and frame in the bathroom. The female Landlord stated that the window was broken during the tenancy and the Tenant stated that the window was broken prior her tenancy beginning. The Landlord submitted no evidence to corroborate her statement that the window was in good condition at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$110.00, to remove a trampoline, furniture and miscellaneous garbage from the yard of the residential complex. The Landlord submitted photocopies of photographs that, although unclear, appear to show garbage and personal property in the yard. The Tenant agrees that

she left a trampoline and a couch in the yard of the residential complex, but she says all of the other garbage was left by the occupants of the lower rental unit.

The Landlord is claiming compensation, in the amount of \$165.00, for the cost of cleaning the rental unit. The Landlord stated that there was personal garbage left in the rental unit, and that she had to clean the floors, bathrooms, fridge, oven and fireplace. She stated that she spent approximately eleven hours cleaning the rental unit. Prior to the original hearing, the Landlord submitted photocopies of photographs of the interior of the rental unit, however they are unclear and do not assist me in determining the cleanliness of the rental unit.

Prior to the reconvened hearing, the Landlord submitted additional photographs that show the oven was not cleaned and some cupboards had not been emptied and/or cleaned.

The Landlord submitted a copy of an email from a male who helped the Landlord clean the rental unit after it had been vacated by the Tenant. In the email the male stated that there was garbage left in the kitchen; that the oven required significant cleaning; that the fridge required significant cleaning; that the bathtub and sink required cleaning; that all floors needed to be washed; and that the fireplace required cleaning.

The Tenant stated that she did wash the floors, although she acknowledged they may have been streaked. She acknowledged that she did not clean the fridge or the stove.

The Tenant is seeking a reduction in the rent she paid, at a rate of \$25.00 per month, because the dishwasher did not work during any period of her tenancy. As this tenancy lasted 7 months, she is seeking compensation of \$175.00. She stated that she reported the problem to the male Landlord sometime in September, at which time she gave him the broken agitator from the dishwasher. She stated that the dishwasher was never fixed so she reminded them again, via email, during the first week on November. She submitted no evidence to corroborate her statement that she advised the Landlord of the problem with the dishwasher in September of 2008.

The female Landlord stated that they were unaware of the problem with the dishwasher until the sometime near the end of November. She stated that they attempted to repair the dishwasher after they were notified, but the repairs have not yet been completed because of a problem with ordering the correct parts. In an email, dated February 04, 2009, the male Landlord reminded the Tenant that she had not informed him of the broken dishwasher until December of 2009. In an email dated February 12, 2009, the male Landlord reiterated that he was unaware that the Tenant had been without a dishwasher since August of 2008 and he offered to give her \$100.00 in compensation.

The Tenant is seeking compensation for the inconvenience of repeated losses of power that they experienced during December, January and February of 2009. She stated

that during this period of time they experienced several unexplained power failures, which she suspects were caused either by the occupants of the rental unit below them overloading the electrical circuits or purposely tripping the breakers to the Tenant's rental unit. She stated that they did not have access to the breaker box because it was located in the lower rental unit and the occupants of the rental unit were either not home when they knocked on their door or they were refusing to answer their door. She stated that she advised the male Landlord of the problem on several occasions but he advised her that he could not assist.

The female Landlord stated that she was not aware of a problem with the breaker, however in the Landlord's statement of claim she acknowledged that the Tenant reported "power outages she has experienced over the past two weeks" in early to mid-December. In the same paragraph she stated that "As the fuse box for the house is located in the downstairs suite, it is inconvenient for (the female Landlord) to get the downstairs tenants to reset the breakers. Concerns are developing with the new downstairs tenants..... They are refusing to communicate with us...." In another paragraph in the Landlord's statement of claim, the Landlord wrote that in mid-January "electrical problems persist even after 6 hours of work by an electrical contractor. (The Tenant) suggests that the downstairs tenants (.....) are purposely turning off the breakers."

The sole purpose of the hearing on June 08, 2009, was to consider the merits of the Tenant's application for compensation for living with a substandard deck; for living in a rental unit with substandard paint; for inadequate garbage removal; and for harassment, as there had been insufficient time to consider these matters at the original hearing. As the Tenant did not attend the hearing on June 08, 2009, I was unable to consider the merits of those claims.

Analysis

I find that the Landlords are obligated to pay the hydro for this rental unit and that they must compensate the Tenant for hydro bills they incurred at the rental unit during their tenancy. I find, however, that the Tenant has submitted insufficient evidence to establish that she incurred a hydro bill in the amount of \$2,286.70. In the absence of documentary evidence that establishes the amount of hydro that was paid by the Tenants, I cannot determine the amount that is owed. On this basis, I dismiss the Tenant's application for compensation for hydro costs.

I find that the Tenant failed to comply with section 26(1) of the *Act*, which *requires* tenants to pay rent when it is due even when the Landlord fails to comply with the *Act*, unless the tenant has the right under the *Act* to deduct all or a portion of the rent. In the circumstances before me, I have no evidence that the Tenant had authority to retain any portion of the rent that was due and I therefore find that she owes \$500.00 in rent from January of 2009 and \$1,300.00 in rent from February of 2009.

I find that the Tenant failed to comply with section 45(1) of the *Act*, when she ended this tenancy without providing the Landlord with one month's notice to end the tenancy. Similarly, I find that the Landlord failed to comply with section 27(1) of the *Act* when she terminated the hydro service to the rental unit, as hydro was included in the monthly rent. I find that hydro service was a material part of this tenancy agreement and that termination of that service was grounds to end this tenancy without a full month's notice in circumstances such as these, where the Tenant would have been responsible for paying hydro for occupants of another rental unit if she continued to reside in her rental unit. In these circumstances, I find that the Landlord's actions significantly contributed to her loss of revenue. On this basis, I dismiss the Landlord's application for loss of revenue for March of 2009.

I note that the female Landlord gave contradictory evidence in regards to the conversation about hydro. At the first hearing she stated that she told the Tenant that she would have to put the hydro bill into the Tenant's name and at the second hearing she stated that the Tenant was told the hydro would continue regardless of whether the bill was not transferred into the Tenant's name. I find her first statement to be more credible, as it is consistent with the information provided by the Tenant and it is difficult for me to accept that the Tenant would have placed the hydro in her brother-in-law's name unless she believed that hydro service was at risk of being terminated.

There is a general legal principle that places the burden of providing that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that the bathroom window was damaged during the tenancy rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the window was damaged during the tenancy. In reaching this conclusion, I was strongly influenced by the lack of any evidence, such as photographs or a Condition Inspection Report that corroborates the Landlord's statement that the window was not broken prior to the tenancy. On this basis, I dismiss the Landlord's application for compensation for damage to the window.

The burden of proving that all of the garbage that was left in the yard of the residential complex was left by the Tenant, and not the occupants of the lower rental unit, also rests with the Landlord, and I find that the Landlord has submitted insufficient evidence to show that the Tenant was responsible for leaving all of the garbage. As the Tenant has admitted to leaving a large trampoline and a couch, I find that she is responsible for the costs of removing those items, although I do not find that she is responsible for the costs of removing all of the garbage from the yard. I arbitrarily award the Landlord compensation, in the amount of \$80.00 for removing the couch and the trampoline, which I find to be reasonable compensation for moving these large items.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean the rental unit at the end of the tenancy. I therefore find that the Landlords are

entitled to compensation for any damages that flow from their failure to comply with the Act. Based on the photographs provided by the Landlord, the statements of the Landlord, the email from the witness, and the admissions of the Tenant, I find that the Landlord's claim for compensation for cleaning the rental unit, in the amount of \$165.00, is reasonable compensation for the amount of cleaning that was required. I therefore find that the Tenant must pay the Landlord \$165.00 for cleaning costs.

The burden of proving that in September of 2008 she advised the Landlord that her dishwasher was not working rests with the Tenant. I find that the Tenant submitted insufficient evidence to show that she advised the Landlord of the problem with the dishwasher in September and I therefore cannot compensate her for being without a dishwasher for the entire period of her tenancy. Based on the Landlords' admission that they became aware that the dishwasher wasn't working sometime in November, I find that the Tenant is entitled to some compensation for being without a dishwasher for a portion of this tenancy. I find that \$100.00 in compensation for being without a dishwasher, as offered by the Landlords, is reasonable in these circumstances, and I find that the Tenant should be compensated in that amount.

I find, in the balance of probabilities, that the Tenant was denied her right to the quiet enjoyment of her rental unit because of an on-going problem with the breaker. As both parties suspect the occupants living below the Tenant were intentionally tripping the breaker due to an on-going conflict with the Landlord and in the absence of any other reasonable explanation, I find, on the balance of probabilities, that the occupants living below were intentionally disrupting hydro service to the Tenant's rental unit. I find that this posed a significant problem for the Tenant, as the Tenant did not have access to the breaker box and the Landlord did not live on-site.

I find that the Landlord would only be responsible for compensating the Tenant for the loss of quiet enjoyment that was caused by the actions of another occupant if the Landlord failed to take reasonable steps to prevent it. In these circumstances, I find that the Landlord was attempting to end the tenancy of the occupants living below this Tenant, which was a reasonable course of action. I also find that it was reasonable for the Landlord not to attempt to access the lower rental unit to restore power as that, in all likelihood, would have exacerbated the problem. In these circumstances, I find that the Landlord acted reasonably, and that the Landlord should not be held liable for the loss of quiet enjoyment that was caused by the occupants living below the Tenant.

I find that the Tenant failed to diligently pursue her application for compensation for living with a substandard deck; for living in a rental unit with substandard paint; for inadequate garbage removal; and for harassment, as she failed to attend the reconvened hearing on June 08, 2009. On this basis, I dismiss the Tenant's application for compensation for living with a substandard deck; for living in a rental unit with substandard paint; for inadequate garbage removal; and for harassment, without leave to reapply on these issues.

I find that the applications of both parties have merit, and I therefore find that each party is responsible for the costs of filing their own Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,045.00, which is comprised of \$1,800.00 in unpaid rent, \$165.00 for cleaning costs, and \$80.00 for the cost of removing garbage.

I find that the Tenant has established a monetary claim, in the amount of \$100.00 in compensation for living without a dishwasher during part of this tenancy.

After offsetting the monetary claims, I find that the Tenant owes the Landlord \$1,945.00. I hereby authorize the Landlord to retain the security deposit plus interest, in the amount of \$402.00 and the pet damage deposit, in the amount of \$276.72, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,266.28. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: June 09, 2009