



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

CNL, MNR, OLC, RP, PSF, LRE, AS, RR, FF, O

Introduction

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

At the start of this hearing the tenant experienced problems with the use of her phone and was unable to be heard. This matter was corrected and the tenant and her advocate were each able to call in on separate phones and fully participate in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for landlord's Use issued on May 17, 2009 be cancelled?

Is the tenant entitled to a monetary Order in the sum of \$110.00?

Must the landlord comply with the Act, make repairs and provide services and facilities required by law?

May conditions be set on the landlord's right to enter the rental unit?

Is the tenant allowed to assign or sublet the rental unit?

May the tenant reduce the rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to filing fee costs?

Background and Evidence

Notice to End Tenancy:

The Landlord and the Tenant agree that this tenancy began on April 1, 2009. Rent is \$1,100.00 per month. On May 7, 2009 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use. The tenant confirmed receipt of the Notice which has an effective vacancy date of August 1, 2009. The reason for ending the tenancy that was stated on the Notice was a plan to move a family member into the rental unit.

The landlord testified that his twenty-four year old daughter who lives upstairs with her parents is now of an age where she would like some independence. The family plan on having their daughter move into the downstairs suite in order to provide her with more privacy.

The tenant testified that she does not believe the landlord can afford to cease renting this unit. The tenant did not state that she feels the landlord's daughter will not move into the rental unit.

Heat:

The tenant testified that shortly after she moved into the rental unit she experienced problems due to the lack of control over the heat in her unit. The landlord testified that the tenant does not have a thermostat with which to control her own heat. The parties agree that the tenant purchased a space heater for her own use and that the tenant offered to pay an additional \$10.00 per month for the extra hydro consumption. The tenant stated that the landlord did not want her using the heater. The tenant is claiming costs of \$110.00 for the extra heat charges and cost of a heater purchased for \$95.19.

The landlord testified that they did keep the temperature lower during the day and that they were aware the tenant had space heaters. The landlord testified that they do not think the tenant should use a space heater in the bathroom; due to safety concerns. During the hearing it was agreed between the parties that the tenant will have full use of her space heaters without any interference.

Landlord Access to the Rental Unit:

During the hearing there was disagreement between the parties in relation to landlord's access to the rental unit. The tenant stated that the landlord is constantly coming into the rental unit but could provide only one example from three months ago. The landlord testified that they have only entered the unit the request of the tenant.

Garbage Removal:

The tenant testified that at one point she placed her garbage out on the road the night prior to pick-up day and that her garbage was not taken away. The tenant stated that she then paid a friend to take the garbage away for her. The landlord testified that he takes the garbage bins out on the morning of garbage day as they do not wish to attract bears. During the hearing it was confirmed and agreed that the landlord will take the tenant's garbage to the roadside on the morning of each garbage day.

Dryer:

The tenant testified that since approximately May 2008 the dryer had not worked properly. The tenant stated that some time after December 2008 the landlord repaired the dryer. The tenant provided no evidence that she gave the landlord any written request that the dryer be repaired. The landlord testified that once he became aware of the problem with dryer he had it replaced within approximately one week. The tenant stated that she had a witness at the Laundromat who could testify that she came there over a period of time to dry her clothes. The tenant could not locate this witness' phone number and her name was not on the list of potential witnesses supplied by the tenant. The tenant is claiming \$5.00 per trip that she has made to the Laundromat so she could dry her clothes. The tenant stated that she needed to make these trips since May 2008 until approximately December 2008.

Parking:

The tenant testified that since the start of her tenancy she had parked on the street directly in front of the rental unit. The tenant stated that recently the landlord has begun parking in this space and has placed orange cones to mark this as their space. The landlord testified that there was no agreement in relation to on-street parking and they could not guarantee the use of a space that is not part of their property.

Stove:

The tenant testified that the stove in her rental unit never worked and that the landlord provided her with a toaster oven for use, rather than repair the oven. The tenant also testified that she did not request repair of the stove's oven until after December 2008 when she decided that she wished use of a larger oven so she could bake. The landlord testified that he spent more money on the toaster oven than repair of the stove's oven would have cost. The landlord stated that the stove oven requires only a heater element and that if the tenant had requested repair of the stove oven he would have completed this repair. The tenant provided no evidence that the landlord was given a written request to complete this repair.

The applicant withdrew her request to sublet or assign as the tenancy is ending.

Analysis

Notice:

The tenant did not provide any evidence or testimony that leads me to believe that the landlord will not be moving his daughter into the downstairs suite. I find that the Notice to End Tenancy for Landlord's Use is of full force and effect and that the tenancy effective end date is August 1, 2009. During the hearing the landlord did not request an Order of possession.

Heat:

Heat is a service which is considered an essential service to a tenancy. A tenant has an expectation that they can access heat and determine the heat of their rental unit. The lack of a thermostat in the tenant's unit denied her the ability to adjust the heat to her requirements. The parties have agreed that the tenant is allowed to use her space heaters at any time and as often as she needs and I Order that the Landlord comply with this agreement. I find that as the tenant voluntarily offered to make additional rent payments of \$10.00 each month and that this fee was not imposed, she is not entitled to reimbursement of those payments. The tenant had a remedy at the time of the initial loss of heat and was at liberty to issue the landlord a written request they provide her access to the heat. However, I do find that the tenant is entitled to return of the cost of purchase of her space heater in the sum of \$95.19 as she was denied the ability to adjust her heat within the rental unit.

Access to the Rental Unit:

Section 29 of the Act determines the rules in relation to a landlord's access to a rental unit. If the landlord has a need to enter the tenant's unit the tenant must be provided with at least 24 hours written notice which includes the time of entry and the reason for the entry. Entry to a rental unit by a landlord should normally occur between 8 a.m. and 9 p.m. During the hearing agreement was reached that the landlord will ensure that any entry to the rental unit occurs as required by the Act. I find that there is no reason to place additional restrictions on access.

Garbage Removal:

The parties have agreed that the landlord will place the tenant's garbage bins at the roadside on the morning of each pick-up day. If the garbage is not removed from the roadside this is no fault of the landlord's.

Dryer:

The tenant's testimony of a loss of use of the dryer is in direct contradiction to the landlord's testimony. To get repairs done, the tenant should submit a written request to the landlord indicating what repairs are needed and asking they be completed within a reasonable period. If the landlord still does not complete the repair within a reasonable period, the tenant can submit an application for dispute resolution asking for an order forcing the landlord to do the repairs. The tenant has made an application for dispute resolution but has not provided proof of any written communication with the landlord requesting repair of the dryer. The landlord has testified that once he was aware of the problem with the dryer he had the dryer replaced. In the absence of any written request for repair, receipts or proof of loss in relation to trips to a Laundromat and dates that the tenant started and ended these trips, I find that the tenant's claim for compensation is dismissed.

Parking:

The tenancy agreement signed by the parties does not include a reference in relation to the provision of a parking space. In the past the tenant has parked on the street in front of the house and may continue to park directly in front of the house at any time that space is available, despite any markers that may be placed on the road. The only impediment to on-street parking, directly in front of the home, would be due to any municipal or government restrictions. If a vehicle owned by someone who does not reside at the landlord's home is parked in front of the house this would be beyond the control of the landlord. If the landlord has alternate parking in his driveway or car port, I Order that the landlords park their vehicles in the driveway in order to leave the street parking for the use of the tenant.

Stove:

I have accepted the landlord's testimony that he did provide the tenant with a new toaster oven, at the request of the tenant. The tenant decided early this year that she wished to have the stove oven repaired but in the absence of any written request to the landlord that the stove oven be repaired I find that the tenant's claim for compensation is without merit. I do find that the landlord should immediately repair the element in the oven and ensure that the oven is in working condition for the remainder of this tenancy.

I find that the tenant's application has merit, and she is entitled to recover the filing fee from the landlord that she paid for filing this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$145.19, which is comprised of \$95.18 as compensation for the purchase of a heater and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for the amount of \$145.19. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant withdrew her request to assign or sublet the rental unit.

The balance of tenant's claim is dismissed without leave to reapply.

Dated June 25, 2009.

Dispute Resolution Officer