

Decision

Dispute Codes: MNDC, RR

Introduction

This hearing dealt with an application from the tenant for a monetary order as compensation for damage or loss under the Act / regulation / tenancy agreement, in addition to permission to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on or about March 13, 2009. There was no copy of the tenancy agreement in evidence and the tenant expressed some concern about its adequacy. Rent in the amount of \$800.00 is payable in advance on the first day of each month, and a security deposit of \$400.00 was collected on or about March 5, 2009.

Ownership of the unit changed on or about July 1, 2009. While the tenant states she had miscellaneous concerns about the condition of the unit beforehand, she formally documented her concerns to the attention of the landlord's agents by letter dated September 4, 2009. This was followed up by a further letter dated October 1, 2009. A person first attended the unit to begin repairs on October 5, 2009. Subsequent to her letters and the filing of her application for dispute resolution on October 30, 2009, the tenant reports that some progress has been made with required repairs. However, the tenant testified that work has been sporadic, progress has been slow, and repairs have still not entirely been completed.

During the hearing the parties discussed the several aspects of the dispute and undertook to achieve some resolution.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution of some aspects of the dispute. Specifically, it was agreed as follows:

- Hole in the ceiling in the basement: the landlord will instruct the maintenance person to repair this hole by no later than midnight, Friday, December 18, 2009;
- Hole in the wall beneath the heater: the landlord will instruct the maintenance person to complete a temporary repair of this hole by no later than midnight, Friday, December 18, 2009; a more permanent repair of this hole will be completed in the Spring of 2010;
- Faulty thermostat in heaters & dysfunctional kitchen plug-in: the landlord will contact the electrician today and request that he make direct contact with the tenant as soon as possible;
- Related to the above, the landlord will instruct the electrician to arrange a suitable time to attend the unit with the tenant in order to re-evaluate the thermostat in the heaters (and repair if necessary), AND to repair the kitchen plug-in;
- Improperly fitted front door knob: the landlord will instruct the maintenance person to repair this by no later than midnight, Friday, December 18, 2009.
- Receipts issued for payment of rent: the landlord will pay careful attention to the provision of correct information on all receipts henceforth issued to the tenant upon receipt of her payment of rent. This undertaking specifically

concerns the spelling of the tenant's name and the identification of the address of the rental unit.

For the information of the parties, attention is drawn to section 32 of the Act which addresses **Landlord and tenant obligations to repair and maintain**, as follows:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Policy Guideline # 16 addresses Claims in Damages, and provides in part, as follows:

MONETARY REMEDIES

The Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the Act. Damages is money awarded to a party who has suffered a loss which the law recognizes. Claims may be brought in Tort and/or Breach of Contract.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered “pecuniary” losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered “non-pecuniary” losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering.

As for the tenant’s application for compensation for damage or loss under the Act / regulation / tenancy agreement, I find that she has established entitlement to \$340.00. This amount is calculated on the basis of \$5.00 per day from September 5, 2009 (the day after the date of the tenant’s letter to the landlord of September 4, 2009), to October 5, 2009 (inclusive) which is when repair work began, and \$2.50 per day from October 6, 2009 (the day after repair work began) to December 18, 2009, which is the date by which the landlord has undertaken to have completed all repairs. The amount calculated reflects consideration of steady, despite slow progress that has been made with repairs during this period:

September 5 - 30: 26 days x \$5.00 = \$130.00

October 1 - 5: 5 days x \$5.00 = \$25.00

October 6 - 31: 26 days x \$2.50 = \$65.00

November 1 - 30: 30 days x \$2.50 = \$75.00

December 1 - 18: 18 days x \$2.50 = \$45.00

I hereby order that the tenant may withhold **\$340.00** from the next regular payment of monthly rent.

As there was some discussion during the hearing about landlord access to a rental unit, for the information of the parties attention is drawn to section 29 of the Act which speaks to **Landlord's right to enter rental unit restricted**, as follows:

29(1) A landlord must not enter a rental that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Further, as the tenant expressed some concern about the adequacy of the written residential tenancy agreement in place for this tenancy, the attention of the parties is drawn to section 13 of the Act which addresses **Requirements for tenancy agreements**. The full text of the Act, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Conclusion

Following from all of the above, I hereby order the landlord to FORTHWITH undertake to comply with all aspects of the agreement reached between the parties during the hearing, as above.

Further, I hereby order that the tenant may withhold **\$340.00** from the next regular payment of monthly rent.

DATE: December 11, 2009

Dispute Resolution Officer