Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, OLC, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has 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 has made application for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement; for the return of all or part of the security deposit, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented 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 relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, are whether the Tenant is entitled to compensation for the last month's rent; to compensation for living without a fireplace, a functional dryer, and garburator during this tenancy; for the return of their 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 Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to compensation for loss of revenue; for cleaning the carpet; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant each submitted a copy of a tenancy agreement that indicates that the parties entered into a fixed term tenancy agreement that began on April 03, 2009 and was to end on April 14, 2010; that the Tenant was required to pay month rent of $1,550.00 on the first day of each month; that the Tenant will repaint the entire unit and refurbish the kitchen and bathroom cabinets; and that the Tenant will not be required to pay rent on the first and last month of the tenancy.

The Agent for the Landlord #1 and the Tenant agree that the Tenant paid a security deposit of $775.00 on April 02, 2009.

The Tenant contends that she returned the keys and a letter, in which she provided the Landlord with her forwarding address, to the office of the Agent for the Landlord on October 01, 2009. The Agent for the Landlord#1 stated that the Landlord never received the forwarding address or the keys to the rental unit.

The Tenant submitted a letter from a friend, which she states corroborates her statement that the Landlord was provided with the Tenant's forwarding address on October 01, 2009. The Landlord stated that she was not served with a copy of the letter from the Tenant's friend.

The Tenant stated that she sent the letter from her friend, via Purolator, to the Landlord by Purolator on January 19, 2010. Section 88 of the Act outlines the methods of serving evidence to another party. Section 88 does not stipulate that evidence can be served by a delivery service such as Purolator. I find that this evidence, and any other evidence that was served by the Tenant on January 19, 2010, does not comply with section 88 of the *Act.* I also find that these documents were only served three business days in advance of this hearing, which fails to comply with section 3.5 of the Residential Tenancy Branch Rules of Procedure, which requires evidence to be served at least five days of the hearing. As this evidence was not served in accordance with the Rules of Procedure and the legislation, I decline to consider the evidence that was sent to the Landlord on January 19, 2010 and submitted to the Residential Tenancy Branch on the same date.

The Tenant declined the opportunity to call the author of the letter as a witness, as she did not have a telephone number for the witness.

The Agent for the Landlord #1 and the Tenant agree that the Tenant sent an email to the Landlord on September 25, 2009, in which the Tenant advised that that the Tenant wished to end the tenancy on October 01, 2009, as a result of construction that was scheduled to begin on September 28, 2009, which renders the rental unit "uninhabitable and unsafe". The parties agree that the Landlord responded to the Tenant's notice, via email, on September 25, 2009, at which time the Landlord advised that they would be

willing to end the fixed term tenancy early, providing they received one month's notice. The parties agree that the Tenant vacated the rental unit on October 01, 2009.

The Tenant stated that the Tenant ended this tenancy because they received notification that the residential complex would be undergoing significant repairs; that they had to move a significant amount of personal property away from the walls of the rental unit which would significantly disturb the quiet enjoyment of the rental unit; and that they had to provide keys for the rental unit to contractors; which was a breach of their privacy.

The Agent for the Landlord #1 agreed that the renovations represented a significant inconvenience for the Tenant; that because of the inconvenience the Landlord would agree to end the tenancy early with one month's notice to end; and that she is unaware of anyone else in the residential complex who ended their tenancy as a result of the renovations.

The Landlord is seeking compensation, in the amount of $323.35, for the cost of cleaning the carpet. The Agent and the Tenant agree that the carpet was not professionally cleaned at the end of the tenancy and that the tenancy agreement required the Tenant to professionally clean the carpet at the end of the tenancy if the carpet had been professionally cleaned at the beginning of the tenancy. The Agent stated that the carpet had been professionally cleaned at the beginning of the tenancy.

The Landlord submitted a copy of a receipt from On Side Restoration which indicates that the Landlord incurred this expense. The Agent for the Landlord #1 stated that the Landlord sent this receipt to the Tenant, with a variety of other documents on January 07, 2010, via registered mail to the service address for the Tenant that was provided on the Tenant's Application for Dispute Resolution. The Landlord submitted a Canada Post receipt that corroborates that a package was sent to the Tenant at their service address on January 07, 2010.

The Tenant stated that she did not receive this evidence as the service address is the address of a friend, who no longer lives at that service address. The Tenant acknowledges that the service address for the Tenant has not been amended since the Application for Dispute Resolution was filed.

The Tenant is seeking compensation, in the amount of $1,550.00, for the last month's rent that she contends was due as part of the tenancy agreement. She stated that the Tenant did not pay rent for the first month of the tenancy. She contends that the Tenant should be entitled to the last month's free rent because they painted the rental unit as required by the tenancy agreement and because they refurbished the kitchen and bathroom cabinets as required by the tenancy agreement.

The Agent for the Landlord #2 contends that the first month of free rent was provided to the Tenant in exchange for painting the rental unit and refurbishing the kitchen and bathroom cabinets. She contends that the last month of free rent was provided to the

Tenant as an incentive for signing a fixed term tenancy and that this incentive was offered to all prospective tenants. The Landlord submitted a copy of an advertisement from their website, dated February 18, 2008, that clearly associates the one month free rent with the fixed term tenancy.

The Tenant is claiming compensation, in the amount of $1,800.00, for being without a dryer, a fireplace, and a garbarator for a portion of this tenancy.

The Agent for the Landlord #1 and the Tenant agree that the dryer "squeaked" at the beginning of this tenancy. The Tenant stated that the dryer squeaked so loudly that they could not use the dryer while they were home; that they reported the problem to the Landlord once per month; that a technician inspected the dryer on two occasions; and that a technician attempted to repair the dryer on September 24, 2009, at which time he was advised that the Tenant was moving and no longer required the repair.

The Landlord submitted a letter from an appliance technician, that showed the technician viewed the dryer on May 04, 2009 and did not detect a noise or problem with the dryer, and that he viewed it again on September 08, 2009 and determined that the dryer needed a new bearing.

The Agent for the Landlord#1 and the Tenant agreed that the garburator was removed sometime during the first month of the tenancy and that the Tenants did not have a garburator for the last five months of the tenancy.

The Agent for the Landlord#1 and the Tenant agreed that the fireplace did not work at any time during this tenancy and that there was an understanding at the beginning of the tenancy that the fireplace would be repaired. The Tenant stated that this detracted from the tenancy because she would have liked to use the fireplace for ambiance and for heat during chilly evenings.

Analysis

On the basis of the Canada Post receipt and the evidence of the Agent for the Landlord #1, I accept that the Landlord served several documents to the Tenants, via registered mail, on January 07, 2010. Although I also accept that the Tenant did not receive the documents because their friend no longer resided at the service address they provided to the Landlord, I find that these documents were served in accordance with section 88 of the Act, and I will consider these documents as evidence, which included photographs, a receipt for carpet cleaning, an advertisement for the rental unit, dated February 18, 2008, and a letter from an appliance technician. In reaching this decision, I note that the Tenant did not provide the Landlord with an alternate service address, in writing, after their friend moved from the service address that was originally provided.

The undisputed evidence shows that the Landlord and the Tenant entered into a fixed term tenancy agreement that began on April 03, 2009 and was to end on April 14, 2010; that the Tenant was required to pay monthly rent of $1,550.00 on the first day of each month; that the Tenant was required to paint the entire unit and refurbish the kitchen and bathroom cabinets; that the Tenant was not required to pay rent on the first and last month of the tenancy; and that the Tenant vacated the rental unit on October 01, 2009.

I find that the Tenant submitted no evidence, that was served in accordance with the legislation and the Rules of Procedure, that corroborates the Tenant's testimony that she provided the Landlord with a forwarding address in writing. The burden of proving that the Landlord was served with the Tenant's forwarding address rests with the Tenant.

I find that the Tenant failed to comply with section 45(2) of the *Act* when the Tenant ended this tenancy on a date that is earlier that the date specified in the tenancy agreement as the end of the tenancy and when the Tenant failed to provide the Landlord with written notice of the Tenant's intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. In these circumstances the Tenant provided the Landlord with less than one week's notice and the Tenant ended the fixed term tenancy more than six months prematurely. I find that the early end to this tenancy resulted in a loss of revenue for the month of October and that the late notice to vacate prevented the Landlord from finding new tenants for that month. On this basis, I find that the Tenant must compensate the Landlord for the loss of revenue that resulted from the early end to tenancy, in the amount of $1,550.00.

In reaching this conclusion, I find that the Tenant submitted insufficient evidence to establish that this rental unit was uninhabitable or unsafe after October 01, 2009. Although I accept that the Tenant's right to quiet enjoyment may have been breached as a result of the repairs, I do not find that the repairs rendered the rental unit uninhabitable. I find that this tenancy ended as a result of the Tenant vacating the rental unit and not because the tenancy agreement had been frustrated, and I find that the Tenant was obligated to end the tenancy in accordance with section 45 of the *Act.*

In the absence of evidence to the contrary, I accept that the carpets in the rental unit had been professionally cleaned at the beginning of this tenancy; that the tenancy agreement required the Tenant to have the carpets professionally cleaned at the end of the tenancy; that the Tenant did not have the carpets professionally cleaned at the end of the tenancy; and that the Landlord paid $323.35 to have the carpets professionally cleaned. As the Tenant failed to comply with this term of the tenancy agreement, I find that the Tenant is obligated to compensate the Landlord, in the amount of $323.35, for the cost of having the carpets professionally cleaned.

I find that the tenancy agreement clearly stipulated that this tenancy was to end on May 14, 2010 and that the Tenant was not required to pay rent for the last month of this tenancy. I interpret the terms of this tenancy agreement to be that the Tenant is not

required to pay rent for the period between May 14, 2010 to April 14, 2010, which is clearly the last month of this fixed term tenancy, and I find that the Tenant was not required to pay rent for that period, regardless of whether they elected to occupy the rental unit during that period of time. I find that it would be unreasonable for me conclude that the Tenant would be entitled to benefit from the terms of this tenancy agreement, specifically the offer of free rent for the last month of the tenancy agreement, if they do not comply with their obligations under the tenancy agreement, specifically that they pay rent to the Landlord for a period of ten months. On this basis, I dismiss the Tenant's application for compensation for the last month of rent.

Section 27(2) of the Act stipulates that the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy whenever the Landlord terminates or restricts a service or facility.

In the absence of evidence to the contrary I accept that the dryer in the rental unit was noisy and not functioning entirely properly. I find that the Tenant submitted insufficient evidence to show that the dryer was not functioning properly for the entire tenancy, albeit it was making some noise. In reaching this conclusion I was strongly influenced by the evidence of the technician who could not detect a problem with the dryer when he viewed it on May 04, 2009. I find that the Tenant submitted insufficient evidence to show that the dryer was not functional during any portion of this tenancy even though it was making noise throughout the tenancy. In reaching this conclusion, I was strongly influenced by the Tenant's statement that the dryer was so loud they could not use it when they were in the rental unit. I find that the Tenant is entitled to compensation, in the amount of $50.00, for the inconvenience of operating the dryer while they were not occupying the rental unit. In determining the amount of compensation, I find that the noise caused by the dryer could not have been significant during the early portion of the tenancy, as it could not be detected by the technician on May 04, 2009.

Based on the undisputed evidence, I find that the rental unit had a garburator at the beginning of the tenancy and that the Landlord removed the garburator after the first month of the tenancy. Although I accept that the garburator was a service or facility that formed part of this tenancy, I do not find that this appliance greatly enhances or detracts from the value of the tenancy. On this basis, I award the Tenant compensation, in the amount of $25.00, for being without a garburator for five months.

Based on the undisputed evidence, I find that the rental unit was equipped with a gas fireplace that did not work during this tenancy. Although I accept that the fireplace was a service or facility that formed part of this tenancy, I do not find that the absence of the fireplace during the summer months greatly enhances or detracts from the value of the tenancy. On this basis, I award the Tenant compensation, in the amount of $100.00, for being without a fireplace for six months. In determining the amount of compensation, I was strongly influenced by the fact that that this tenancy began in late spring and ended in early fall, during which time a fireplace is not a particularly valuable commodity.

I find that the Application for Dispute Resolution that was filed by each party has some merit and I therefore find that each party shall be 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 $1,873.35, which is comprised on $1,550.00 in unpaid rent and $323.35 for cleaning the carpet.

I find that the Tenant has established a monetary claim, in the amount of $175.00, as compensation for being without a fireplace, a garburator, and a fully functional dryer during a portion of this tenancy.

After offsetting these two monetary awards, I find that the Tenant owes the Landlord $1,698.35. I hereby authorize the Landlord to retain the security deposit of $775.00 in partial satisfaction of this monetary claim, pursuant to section 72(2) of the *Act*.

Based on these determinations I grant the Landlord a monetary Order for the amount $923.35. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 25, 2010.

Dispute Resolution Officer