Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of her security deposit. Both parties participated in the hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the tenant entitled to the return of her security deposit?

Background and Evidence

The following facts are not in dispute. The tenancy began in October 2007. The rent was set at $950.00 per month and the tenant paid a $475.00 security deposit on September 5, 2007. The rental unit is on the lower floor of a residence in which the landlords occupied the upper floor. The parties agreed that the landlords would make repairs to the bathroom during the month of June 2008 while the tenant would be travelling outside of the country.

The tenant testified that she returned from her travels on June 26 in the late evening to discover that the bathroom, living room and kitchen of the rental unit had been “torn apart” in that the flooring, drywall and cabinetry had been removed and her belongings which had been in those rooms had been moved into the bedrooms or outside. The tenant testified that she stayed with M.G. and the next day spoke with the landlords about the situation. The parties agreed that the tenant required alternative accommodation while repairs were underway and she began to work with the landlords

to find a unit in which she could stay until repairs were complete. The tenant testified that she was unable to find suitable accommodation and that she ended up staying with a friend from June 26 to August 1 when she found other permanent accommodation.

The landlords testified that on June 26 they were prepared to finish the repairs to the bathroom when their carpenter noted a trickle of water coming into the bathroom from the living area as well as a strong, foul odour. Further investigation led the carpenter to find that under the subfloor of the living area, there had been an intrusion of water apparently over a long period of time which caused the disintegration of the fibreglass insulation creating what he described as a “black sludge.” The area was rife with insects and the bodies of rodents. The landlords read into evidence a letter from the carpenter which provided a detailed description of what was found beneath the subfloor. The landlords presented a witness. K.A.A., whom they had employed to perform repairs. K.A.A. testified that in order to address the problem, everything in the living and kitchen area had to be removed down to the studs in order to properly remediate. K.A.A. and his workmen wore protective gear, including face masks, to protect them from what he considered to be hazardous conditions.

The landlords testified that when they discovered the problem, they immediately telephoned the tenant’s son, who was her emergency contact. The son attended the rental unit and agreed that the unit could not be inhabited. The landlords, K.A.A. and the carpenter in his letter all noted that they had overheard the tenant’s son state that the unit was uninhabitable. The landlords and the tenant agreed that her belongings should be put into storage and that the landlord should rent a mobile storage unit, hiring professional movers to move her belongings into that unit. All of the tenant’s belongings did not fit into the storage unit and the tenant rented a second storage unit at her own expense. Shortly thereafter the tenant discovered that her tenant’s insurance would not cover her belongings while they were in the mobile unit and she asked the landlords to move her belongings to a permanent storage unit. The landlords agreed and again paid for movers to move her belongings to a permanent storage unit which the landlords also paid for.

The parties agreed that the landlords offered to help the tenant find temporary accommodation while repairs were underway. The tenant testified that the landlords were not helpful and were unable to find suitable accommodation elsewhere. The landlords testified that the tenant demanded that they be present at each viewing of a prospective property and was viewing properties which were renting at $2,500.00 per month.

On July 2 the City of Vancouver issued a stop work order, preventing the landlords from continuing remediation until permits were in place. On that date the landlords advised the tenant that the tenancy would have to end as they expected it to be months before permits were in place and they could not give her a specific date on which the tenant could again occupy the unit.

The tenant found another permanent residence into which she moved on August 1, 2008. The tenant provided her forwarding address to the landlords on November 24, 2008 requesting the return of the security deposit as well as compensation for the inconvenience of having been suddenly displaced from her home. Although there was some attempt to settle the issue, the parties were unable to come to an agreement and the landlords continue to hold the security deposit.

The tenant seeks the following compensation:

Refund of June rent	$ 950.00
Section 51 compensation	$ 950.00
Security deposit	$ 475.00
Rent differential	$1,035.00
Accommodation from June 26 – August 1	$1,750.00
Moving and storage costs	$1,347.97
Cleaning of bedding and area rug	$ 244.65
Change of address	$ 72.46
Telephone and internet service	$ 77.59
Damage to belongings	$ 300.00
Loss of income	$ 480.00
Photocopying and document preparation	$ 32.70
Filing fee	$ 100.00
Total:	**$7,815.37**

Analysis

In contract law, when a contract is breached and loss flows from that breach, the injured party is entitled to be made whole. In order to establish her claim, the tenant must prove that the landlords breached the contract and that she suffered a loss as a result. The tenant must also prove the quantum of that loss.

The landlords were faced with what might be called a “no-win” situation. I accept that the deterioration of the insulation under the subfloor created a hazardous environment which required immediate remediation. I find that the landlords acted reasonably when they immediately removed the hazardous material. However, the landlords were still contractually obligated to provide the rental unit to the tenant. I do not accept that the tenancy was frustrated, which defence was advanced by the landlords. Frustration occurs when the subject matter of the contract has so radically changed that the contract is impossible to fulfill. In this case, the rental unit simply required repair, albeit extensive repairs. It had not ceased to exist and there is no reason why after repairs having been completed the tenancy could not have continued. The landlords initially acted quite properly, offering to locate alternative short-term accommodation and paying for the storage of the tenant’s goods. However, when the landlords discovered that the repairs would take significantly longer due to the permitting process, they summarily terminated the tenancy thereby repudiating the contract. I find that in doing so, they contravened their statutory and contractual obligations.

The tenant had already paid rent for the month of June but had not intended to occupy the unit from June 1-25 as she was traveling during that period. The landlords indicated that they were under the impression that they were legally responsible to repay the tenant’s rent for the month of June and suggested that they had agreed with the tenant that they would refund the rent paid for that month. I find that the landlords are under no such legal obligation. The tenant could not have lost quiet enjoyment of the premises during the time she was away and therefore is not legally entitled to a rebate of rent during that period. The parties suggested that they had an agreement, but in order for there to be a legally binding agreement, consideration must have flowed

between the parties. The tenant would have received a refund of rent, but I am unable to find that the landlords received any consideration from the tenant. I find that any agreement regarding rent repayment for the month of January is not contractually binding. I find that tenant is entitled to recover rent paid for June 26 – 30 inclusive and I award the tenant $158.33 for that 5 day period.

The landlords have not made a claim against the security deposit and I find that the tenant is entitled to recover the deposit. I award the tenant $475.00. I note that the tenant may have been entitled to recover double the deposit pursuant to section 38 of the Act as the landlords did not file a claim or return the deposit within 15 days of having received her forwarding address. I have not awarded double the security deposit because the tenant did not make that claim. It would go against the principles of natural justice to make an award which was not claimed and of which the landlord had no prior notice.

As the tenant accepted the end of the tenancy rather than pursuing legal remedies to enforce her contractual rights, I find that she is not entitled to receive the difference in rent between what she paid at the rental unit and what she paid in her new accommodation. Further, neither party provided a copy of the tenancy agreement and I am not persuaded that the tenancy was set for a fixed term in any event. The claim is dismissed.

Although the tenant claimed that she paid $1,750.00 to her friend M.G. for accommodation from June 26 – August 1 inclusive and provided a receipt showing that those monies were received, I do not accept that this was the case. M.G. was repeatedly described as the tenant's boyfriend and the tenant did not dispute this relationship. It goes against social convention that a party in such a relationship would charge the other for emergency accommodation, particularly such an exorbitant amount. In the absence of independent proof such as a cancelled cheque showing that monies actually exchanged hands, I find that this claim is not proven. In any event, the tenant did not pay rent at the rental unit for the month of July. The landlords had the obligation of providing alternative accommodation in order to ensure that the tenant was

receiving the service for which she had paid her rent. They had no obligation to provide free accommodation. As the tenant paid no rent in July, I am unable to find that the landlords should bear the cost of housing when the tenant had breached her obligation to pay rent. The claim is dismissed.

In addition to her claim for breach of contract, the tenant seeks compensation under section 51 of the Act. Under the Act, when a landlord wishes to renovate a rental unit in a manner which requires vacancy, the landlord must serve the tenant with a two month notice to end tenancy and pay the tenant the equivalent of one month's rent as compensation. The tenant argued that her tenancy should have been ended pursuant to a two month notice and she should therefore be entitled to receive compensation. I disagree. As discussed above, the landlords illegally ended the tenancy and the tenant accepted that illegal end. In order for section 51 to be triggered, a two month notice to end tenancy must have been served. Where no notice has been served, section 51 of the Act does not operate. I dismiss the claim for section 51 compensation.

I accept that as the tenant's belongings could not stay in the rental unit and as the landlords illegally evicted the tenant, they had the obligation of paying for the storage of her belongings for June 26 – July 31 inclusive. The parties agreed that the storage unit was too small to accommodate all of the tenant's belongings. I find that the tenant is entitled to recover the cost of the additional locker and I award the tenant $88.78. I find that the tenant is also entitled to the cost of renting a van to move her belongings into the additional locker and I award her $91.58. The tenant claimed that she paid her son $150.00 to help her move but provided no receipt showing that money actually changed hands. I find that the tenant has not proven the claim for her son's labour and I dismiss the claim. The tenant seeks to recover $40.00 as the cost of travelling to and from the storage locker to find personal items she needed while staying at her temporary accommodation. Despite the lack of receipts for this expense, I accept that some travel would have been required and some expense associated with it. I find the claim to be reasonable and characterize it as a claim for inconvenience and loss of quiet enjoyment, which does not require a detailed accounting. I award the tenant $40.00.

I find that the cost of moving her furniture from the storage facility to her new accommodation was a loss that flowed from the landlords' repudiation of the contract and I find that the landlords must bear the cost of the move. I award the tenant $977.61. The total award for moving and storage costs is $1,197.97.

The parties agreed that the tenant's belongings were covered with dust resulting from the work done in the unit. I find that the tenant is entitled to recover the $244.65 paid to clean her bedding and area rug and I award her that sum.

I find that the tenant is entitled to recover the cost of having mail forwarded from the rental unit to her new accommodation and I award the tenant $72.46. The tenant seeks to recover the cost of telephone and internet service as well but did not provide the complete invoice for my scrutiny. The part of the invoice provided does not show whether the service for which the invoice is rendered was for the month of June or the month of July. The tenant would not be entitled to recover the cost of telephone and internet service for the month of June and I find that she has failed to identify the billing period the invoice represents. The claim is dismissed.

The tenant claimed $300.00 alleging damage to her personal belongings but provided no proof of that damage or an itemized list complete with the value of the items allegedly damaged. I dismiss the claim as unproven. I also dismiss the tenant's claim for loss of income. The tenant provided no corroborating evidence to show that she had a contract available to her in July which could not be fulfilled due to the disruption caused by her housing situation.

The tenant has been awarded a total of $2,198.41. I find that the tenant is entitled to recover one half of the filing fee paid to bring her application as she has been only partially successful. I award the tenant $50.00 for her filing fee. I dismiss the claim for the cost of photocopying and preparing for litigation as under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee.

I note that at the hearing the tenant's advocate argued that the tenant had lost quiet enjoyment of the rental unit. I accept that the tenant lost quiet enjoyment, but the

tenant's application did not claim an award for loss of quiet enjoyment and therefore no such award has been made. I further note that the tenant submitted evidence that she paid $525.00 to board her cat for the month of July. Again, the tenant did not make a claim to recover that payment and therefore no award has been made in that regard.

Conclusion

In summary, the tenant has been successful in the following claims:

Refund of rent for June 26 - 30	$ 158.33
Security deposit	$ 475.00
Moving and storage costs	$1,197.97
Cleaning of bedding and area rug	$ 244.65
Change of address	$ 72.46
Filing fee	$ 50.00
Total:	**$2,198.41**

I grant the tenant a monetary order under section 67 for $2,198.41. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: August 30, 2010

Dispute Resolution Officer