Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Tenant to recover compensation for emergency repairs, for loss of a service or facility, for breach of the right to quiet enjoyment, for the return of a security deposit as well as for an amount equivalent to the security deposit due to the Landlord's alleged failure to return it within the time limits required under the Act and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started on November 1, 2005 and ended on November 30, 2009 when the Tenant moved out pursuant to a 2 Month Notice to End Tenancy for Landlords' Use of Property. Rent was $550.00 per month payable in advance on the 1st day of each month.

The Tenant said on October 12, 2005, she met with the Landlord and they signed the tenancy agreement. The Tenant said she paid the Landlord $275.00 for her security deposit and $550.00 for her first month's rent in cash and the Landlord gave the Tenant keys to the rental unit so she could move in some boxes early. The Tenant said the Landlord did not have a receipt so he wrote the payment for the security deposit on the tenancy agreement. The Tenant's witness (V.H.) claimed that she recalled the Tenant arriving at her residence after the Tenant signed the tenancy agreement and advised her that she had paid the security deposit but had not received a receipt.

The Landlord said he could not recall the Tenant having paid a security deposit. The Landlord said he had inserted information into the tenancy agreement (including the security deposit) before the Tenant arrived to sign it. The Landlord said he did not issue the Tenant a receipt and his bank records did not show a payment for November 2005 rent or the security deposit. The Landlord said that commencing January 2006, the Tenant deposited her rent payments to his bank account and therefore he never gave her rent receipts. The Landlord admitted that it was his practice to require a security deposit, however, he could not account for why he had allowed the Tenant not to pay

one. The Parties agree that the Tenant gave the Landlord her forwarding address in writing on November 29, 2009.

The Tenant said that at the beginning of the tenancy, she asked the Landlord for a key to a storage area that had been built onto the rental unit. The Tenant said the Landlord advised her that he needed to do repairs to the floor in that room first and told her initially he would do them within a few weeks and then later told her he would do them in the spring of 2006. The Tenant said the repairs to the storage room were never made and she never had the use of it during the tenancy. Consequently, the Tenant sought compensation of $50.00 per month for each month of the tenancy that she did not have the use of the room. The Landlord claimed that he told the Tenant when they signed that tenancy agreement that she would not have the use of the storage room but instead she could use a shop on the property for storage which she did. The Landlord said the Tenant was “okay” with that arrangement. The Landlord also claimed that the Tenant never asked him to make repairs and that they were not necessary because the Tenant agreed not to use the room.

The Tenant said she also lost the use of an area of the rental property where she stored a vehicle. The Tenant said that the Landlord initially gave her permission to park this vehicle at the front of the 8 acre property but that someone broke a back window so the Landlord permitted her to park it under a lean-to next to the shop. The Tenant claimed that one day in September 2008, the Landlord’s spouse arrived on the rental property unannounced and demanded that she remove the vehicle from the rental property within 14 days. The Tenant said she could not afford to store the vehicle somewhere else so she had it towed to a wrecking yard. The Tenant claimed that the vehicle had a value of $1,000.00 but admitted that it had been uninsured for the previous 8 months. The Tenant said that on this occasion, the Landlord’s spouse also demanded that she remove a fire pit. Consequently, the Tenant sought compensation for the loss of use of a storage area for the vehicle and the cost of the vehicle.

The Landlord admitted that he initially allowed the Tenant to store her vehicle under a lean-to by the shop because the back window was broken but claimed that it continued to sit there and deteriorate further. The Landlord’s witness (S.R.) admitted that that she was upset when she spoke to the Tenant this day but claimed it was because the Tenant refused to give the Landlord a copy of the rental unit key and was making false accusations about her husband looking through the rental unit window and entering without consent. The Landlord’s witness said she told the Tenant to move the uninsured vehicle because it was a hazard as well as to move a fire pit which was too close to the rental unit. The Landlord said the rental property had 2 driveways; one went to the rental unit and was for the Tenant’s use and the other lead to the shed and was for the Landlord’s use. The Landlord said the Tenant could have moved her vehicle onto the driveway and did not have to dispose of it.

The Tenant claimed that from September 2008 until the end of her tenancy, her right to quiet enjoyment of the rental property was breached by the Landlord's and his spouse's harassing behaviour, as follows:

1. The Tenant said when the Landlord's spouse arrived on the property in September 2008 and demanded she move the vehicle and fire pit, she was yelling at the Tenant and behaving in a threatening manner. The Tenant said the Landlord's spouse demanded a key to the rental unit and told her she should not have a dog even though the Landlord had recommended that she get one. The Tenant's witness (H.W.) said he witnessed this event from inside the rental unit and discussed it with the Tenant (who seemed shaken by it) after the Landlord's spouse left.

2. The Tenant said that shortly after this incident, the Landlord, (who was repairing a pump house roof on the property without notice) demanded to know if her boyfriend (who was visiting at that time) was living with her. The Tenant said she felt intimidated by the Landlord's question and said he would not listen to her and she ended up asking her boyfriend to speak to the Landlord on her behalf. The Tenant's witness (H.W.) said he ended up leaving from work this day to discuss the matter with the Landlord.

3. The Tenant said that for part of the summer, her cousin was staying in a tent on the rental property. However, on September 14, 2009, the Landlord (who was cutting the grass on the property without notice) saw her cousin helping her repair a door and yelled at her and demanded to know who her cousin was. The Tenant said that when she tried to explain, the Landlord walked away and told her to call his wife. The Tenant's witness (H.W.) said that he spoke to the Landlord on this day about the Tenant's cousin and the Landlord said he was angry that the tent was still there and that he would no longer speak to the Tenant.

4. The Tenant said she gave the Landlord her application disputing his 2 Month Notice on October 3, 2010. The Tenant said on October 4, 2009 she spoke to the Landlord on the telephone and he tried to explain to her the reasons for the Notice. Later that day, the Tenant said the Landlord and his brother (and co-owner) arrived at the rental property unannounced. The Tenant said she spent some time with the Landlord's brother who pointed out a number of problems with the rental property and claimed that it required extensive repairs. The Tenant said the Landlord and his brother left only to return shortly after at which time the Landlord accused the Tenant of changing the locks on the shop. The Tenant said the Landlord also told her that her boyfriend was not entitled to store his tools in the shop although the Landlord

had earlier agreed that he could do so. The Tenant's witness (D.H.) gave evidence that he was present during this event, was shocked at the Landlord's rude behaviour and believed the Tenant was embarrassed by it.

In summary, the Tenant claimed that throughout the tenancy, the Landlord came to the rental property to cut grass and do maintenance whenever he wanted and without notice to her. The Tenant said that for the last 14 months of the tenancy, she felt like she was "walking on egg shells" because she never knew when the Landlord or his spouse might show up and cause a scene. The Tenant's witness (H.W.) said that he resided in the rental unit from February 2009 until the end of the tenancy and during that time he felt anxious because the Landlord came to the property often and unexpectedly and he could not be sure if the Landlord would be confrontational.

The Landlord denied these allegations. The Landlord said at the beginning of the tenancy, he advised the Tenant that he would be responsible for cutting the grass and other maintenance and she was "okay" with that arrangement. The Landlord said the Tenant was aware that his spouse would be attending the rental unit in September 2008 because she had made an appointment with the Tenant to inspect the rental unit that day (which the Tenant denied). The Landlord said he did not recall confronting the Tenant about her boyfriend living at the rental unit. The Landlord also denied yelling at the Tenant about her cousin staying on the rental property. The Landlord said he had to raise his voice over the sound of the lawnmower to ask the Tenant why the tent was still there with a power cord leading into the shed. The Landlord also said that he was not sure if his brother gave the Tenant notice that they were coming to the rental property on October 4, 2009. The Landlord denied being rude to the Tenant that day or telling her she could not use the shop. The Landlord said he only returned a second time to ensure that the Tenant had a key for the new lock on the shop.

The Tenant also claimed that on October 4, 2009, the Landlord's brother showed her and her father around the rental unit and pointed out problems with it. The Tenant said this was the first time that she was able to view inside the locked storage area. The Tenant claimed that the floor of the room was rotted out and that there was black mould everywhere. The Tenant said this was a great concern to her because one of the walls was a common wall with her bedroom. The Tenant also said she the Landlord's brother advised her that that there was mould in the floor of her room, that in his opinion the rental unit should never have been rented out and that the storage area should have been demolished. The Tenant's witness (H.W.) claimed that on a couple of occasions he told the Landlord that he would repair the storage room but the Landlord declined. Consequently, the Tenant said the Landlord knew or should have known that the condition of the rental unit posed a health risk to her but he failed to disclose it. The Tenant claimed that she, H.W. and her dog had breathing problems during the tenancy which she attributed to "severe black mould."

The Landlord denied that there was mould in the rental unit and claimed instead that the floor of the storage room was suffering from dry rot because it was over 50 years old and build on the dirt ground with some supports. The Landlord said the Tenant never complained about health problems during the tenancy. The Landlord also claimed that his son has resided in the rental property for the past 9 months without incident.

The Tenant also sought to be reimbursed for the cost of a repair to restore power to the shop. The Tenant said the power was out from December 2008 until August 2009. The Tenant said she asked the Landlord on one occasion and her boyfriend asked the Landlord 4-5 other times but the Landlord did not repair it. Consequently, the Tenant said she had a friend repair it at a cost of $95.00 to her but she did not get a receipt. The Tenant said she referred to this was an emergency repair because some of the wires were corroded and not grounded.

The Landlord said that he did not think the lack of power to the shop was an issue because the shop was only being used for storage. In any event, the Landlord said he did try a couple of times to repair the problem but without success. The Landlord said he was willing to reimburse the Tenant for the repair but was told by her boyfriend that a friend had done it and assumed she had it repaired at no cost. In general response, the Landlord claimed he was a responsible and tolerant person and argued that the whole of the Tenant's claim was vexatious and that she only raised these allegations because the Landlord ended the tenancy.

Analysis

I find on a balance of probabilities that the Tenant paid a security deposit of $275.00 on October 12, 2010 when she and the Landlord signed the tenancy agreement. Although the Landlord claimed that he had previously written in the security deposit information and by an oversight did not collect the security deposit, I find that there is a preponderance of evidence that suggests otherwise. In particular, the Tenant's witness, V.H., recalled that the Tenant visited her immediately after signing the tenancy agreement and advised her that she had paid the deposit on that day but had not received a receipt. The Landlord admitted that it was his practice to require a security deposit before giving tenants keys to his rental property. The Landlord also admitted that he could not account for the Tenant's November 2005 rent payment which she claimed was also paid in cash and I note that he never pursued the Tenant for rent arrears. Consequently, I find it more likely than not that a security deposit was paid.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute

resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

The Landlord admitted that he received the Tenant's forwarding address in writing on or about November 29, 2009 but did not return her security deposit. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit **($550.00**) to the Tenant with accrued interest of **$9.74** (on the original amount).

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including, but not limited to, the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit and use of common areas for reasonable and lawful purposes free from significant interference. RTB Policy Guideline #6 (Right to Quiet Enjoyment) states at p. 1 that to establish a breach of this covenant, a tenant must usually show "a course of repeated or persistent threatening or intimidating behaviour."

The Tenant claimed that throughout the tenancy the Landlord frequently and unexpectedly attended to the rental property to do routine maintenance. The Tenant admitted that this did not become problematic until September 2008 when the Landlord's spouse arrived and made a number of demands. Thereafter the Tenant claimed that the Landlord intimidated her by demanding to know if her boyfriend was living with her and when her guests would be leaving. The Tenant also claimed that the Landlord arrived unannounced on October 4, 2009 and humiliated her by creating a scene in front of her family members. The Landlord claimed that the Tenant was aware that he would be coming onto the property from time to time to cut grass and do other maintenance duties and she agreed to that arrangement. The Landlord also denied that he or his spouse were threatening or intimidating to the Tenant.

RTB Policy Guideline #6 says at p. 2 that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises...unless in doing so the Landlord results in the tenant substantially losing the use of the property. While the Landlord should have either gotten the Tenant's advance permission or given her 24 hour written notices each time he intended to be on the rental property, I find that there is sufficient evidence that the Tenant agreed to this arrangement. In particular, the Tenant admitted that the Landlord's presence on the rental property was not the problem but rather his conduct while there from approximately September 2008 until the end of the tenancy was a problem. If the

Tenant did not agree to the Landlord's "frequent and unexpected" attendances, she should have told the Landlord and insisted on advance notice.

As for the 4 incidences complained of by the Tenant, I find that on 2 of those occasions the Landlord or his spouse acted improperly and that their conduct amounted to intimidation. The Landlord's spouse admitted that she was very upset about the Tenant making allegations about her husband's conduct in September 2008 and wanted to confront her about them in person. However, I find that the Landlord's spouse's conduct of arriving at the rental unit without notice, yelling at the Tenant about her allegations, threatening her with eviction if she did not remove a vehicle from the property (that she had been given approval by the Landlord to store) within 14 days and berating her for having a dog (when the Landlord had already given his approval) to be unacceptable and clearly intimidating.

I also find that the Landlord did confront the Tenant about whether her boyfriend was living with her. While the tenancy agreement does not prevent the Tenant from having other occupants in the rental property, I find that it was reasonable for the Landlord to want to know if there was going to be another occupant. Consequently, I find that such a line of questioning by the Landlord was not improper. For similar reasons, I also find that it was not improper from the Landlord to ask the Tenant when her guests would be leaving the property. The evidence of both parties was that the Tenant's guests had been staying in a tent on the common property shared by the Landlord for some months and had not gone by the time the Tenant's boyfriend had advised the Landlord that they would be gone.

However, I find that the Landlord's conduct on October 4, 2009 was unacceptable and amounted to intimidation. The Landlord claimed that he returned to the property, without notice, this day to ensure that the Tenant had a key to the shop. However, based on the evidence of the Tenant and 3 of the witnesses that were present that day, the Landlord instead accused the Tenant of changing the locks on the shop and not providing him with a key. I also find that the Landlord told the Tenant at this time that her boyfriend was not entitled to use the shop for woodworking after he had already told the Tenant that he could. I accept the evidence of the Tenant's guests that the Landlord's conduct was shocking for them and humiliating for the Tenant. As a result of the 2 incidences by the Landlord's spouse in September 2008 and the Landlord on October 4, 2010, I find that the Tenant's right to quiet enjoyment was significantly interfered with on those days and I award her compensation of **$500.00**.

Section 27(2) of the Act says that if a Landlord terminates or restricts a service or facility unless the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction or the service or facility.

The Tenant argued that she lost the use of the storage room attached to the rental unit because the Landlord failed or refused to repair the floor. The Tenant's witness (H.W.) said that both he and the Tenant asked the Landlord a number of times for access to this room and even offered to make the repairs. The Landlord claimed that he told the Tenant at the beginning of the tenancy that the storage room would not be part of the tenancy agreement. I find on a balance of probabilities that the storage room was *not* excluded from the tenancy agreement and note that there is nothing in the Parties' tenancy agreement to that effect. However, the Landlord also claimed that until repairs could be made, he allowed the Tenant to use a larger area in the shop for storage. In the circumstances, I cannot find that the Tenant's loss of this storage area should entitle her to compensation and that part of her claim is dismissed without leave to reapply.

With respect to the Tenant's claim for the loss of a parking spot for a second vehicle, I note that the tenancy agreement does not state that parking is included. However, the evidence of the Landlord was that the Tenant had the use of one driveway and the Landlord had the use of the driveway to the shed were the Tenant's second (inoperable) vehicle was parked. The Landlord admitted that the Tenant was initially given permission to store this vehicle by the shed but his spouse later objected to that arrangement and advised the Tenant to move it. In the absence of a term of the tenancy agreement permitting the Tenant to store a second, inoperable and uninsured vehicle on the property, I find that the Landlord was entitled to ask the Tenant to remove it. I also find that it was the Tenant's choice to dispose of the vehicle rather than to find another place to store it. Consequently, I find that the Tenant's loss of a parking space under the lean-to by the shed does not entitle her to compensation and that part of her claim is dismissed without leave to reapply.

Section 32 of the Act says that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenant also argued that she was entitled to compensation because the Landlord failed to disclose the condition of the storage room attached to the house and also failed to make repairs to it which put her health at risk. In particular, the Tenant claimed that she only discovered at the end of the tenancy that this area adjoining her bedroom was full of black mould. The Tenant's witnesses also claimed there was mould in the floor of this area and the Tenant provided photographs in support of her allegation. The Landlord claimed that there was no black mould only dry rot.

Despite the claims of the Tenant and her witnesses, I find that the Tenant's photographs corroborate the Landlord in that they show dry rot but do not show "severe black

mould." The photographs of the floor and sub-floor areas show some weathered and rotting pieces of wood with intermittent small, dark areas that could be mould. Although the Tenant and her witness (H.W.) claimed that the mould caused or contributed to breathing problems, I find that there is no evidence to support either the existence of toxic mould or any illness caused or contributed by it. While it would have been prudent of the Landlord to repair or demolish this structure, I find that there is insufficient evidence to conclude that his failure to do so rendered the rest of the rental unit a health risk or otherwise unsuitable for occupation during the tenancy.

Finally, the Tenant sought to recover the cost of a repair to restore power to the shop. Although the Tenant could not provide a receipt for this cost, I find that the repair was done and that the cost was more than reasonable. Although the Landlord claimed that the repair was unnecessary because the shop was only used for storage and was adequately lighted with natural light, I find that the repair was necessary. In particular, the Landlord gave the Tenant the use of the shop as storage and therefore I find that she was entitled to have a light source available because natural light would not always have been available especially in the winter months. Consequently, I find that the Tenant is entitled to recover her repair expense of **$95.00**.

As the Tenant has only been partially successful on her claim, I find that she is entitled to recover one-half of her filing fee from the Landlord for this proceeding or **$25.00**. The Tenant also sought to recover the cost of photographs however, I find that most of the photographs were irrelevant and those that were relevant did not assist the Tenant. Consequently, I find that the Tenant is not entitled to recover this expense and that part of her claim is dismissed without leave to reapply.

Conclusion

A Monetary Order in the amount of **$1,179.74** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 22, 2010.

Dispute Resolution Officer