Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, CNR, MNDC, OLC, RP, OPT

Introduction

The tenant has applied to cancel a notice ending tenancy for cause and unpaid rent, both issued on November 14, 2010; a monetary Order for compensation for damage or loss under the Act, an Order that the landlord comply with the Act and make repairs and an Order of possession for the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Notices Ending Tenancy

After much consideration during the hearing the tenant decided to withdraw the portion of her application requesting the notices ending tenancy be cancelled.

On November 29, 2010, the tenant moved out of the rental unit. After hearing testimony I explained that the tenant did not require an Order of possession, as, until my decision was issued in relation to the force of the notices, the tenant would continue to have a right to possess the rental unit. The rental unit is not currently occupied and was available to the tenant, should she wish to return. The tenant decided that she does not wish to move back into the unit, despite any decision that may have been issued as a result of her application.

During the hearing the landlord agreed to mutually accept an end of tenancy of November 30, 2010. November rent has been paid; therefore, as the tenancy has ended effective November 30, 2010, I find that no further rent is owed by the tenant.

Preliminary Matters

As the tenant decided that she did not wish to possess the rental unit and the parties have agreed that the tenancy ended effective November 30, 2010; the portion of the application requesting repairs and that the landlord be Ordered to comply with the Act were not considered.

Each party was asked to submit their copies of the tenancy agreement to the Victoria Residential Tenancy Branch office by 12 noon on December 8, 2010; both were supplied as requested.

The evidence submitted by the landlord prior to this hearing was either not served to the tenant within the timeframe required by the Residential Tenancy Branch Rules of Procedure or the landlord could not establish the date and method of service to the tenant. The landlord's evidence was set aside, however; the landlord was at liberty to reference his material by way of oral submission during the hearing.

The landlord received the tenant's evidence submission.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act in the sum of $770.00?

Background and Evidence

The tenant moved in to the rental unit on October 30, 2010. A deposit in the sum of $300.00 was paid on September 23, 2010. At the start of the tenancy a move-in condition inspection report was completed that indicated some deficiencies in the rental unit.

The tenant supplied 52 pages of evidence which included photographs of the rental unit. The evidence indicated that the parties regularly engaged in communication via email.

The tenant has claimed compensation as follows;

- 6 days without a functioning washer and dryer;
- 17 days without a functioning bathroom/toilet; and
- 17 days loss of use of a secure garage.

The attachment to the application also outlined other issues with the tenancy, such as limited use of the driveway due to a pile of refuse left by the landlord and the presence

of dried rats and rat feces in the yard, a broken sliding door and electrical problems. The tenant supplied 55 pages of evidence and photographs in support of her claim.

The move-in condition inspection report dated October 29, 2010, submitted as evidence indicated that the bathtub was rusted and stained, the bathroom sink was cracked and the mirror was damaged, the cabinets were stained and there were holes present. The tenant stated the report was actually completed on October 30, 2010.

The condition inspection report also indicated that the patio door had a broken pane of glass that had fallen inside of the window frame; that the door slider was broken and the remaining window was dirty; the refridgerator was not clean, there was mould on a shelf and the tile in the kitchen above the sink was cracked.

The move-in condition inspection report indicated that the condition of the washer and dryer was not known. The tenant reported the deficient machines to the landlord on November 1, 2010, and 7 days later new machines were installed in the unit. The tenant was without the use of laundry services for 1 week.

The tenant testified that at the start of the tenancy the bathroom was a filthy mess, with urine stains on the walls and that a smell of urine was present. When the tenant asked if she could paint the walls the landlord stated that it would be best if the walls were removed and that the tile be replaced.

Prior to moving in the tenant had asked the landlord to ensure the bathroom was repaired. Once the tenant moved in the landlord provided her with verbal permission to begin demolition of the bathroom; the tenant's boyfriend at the time assisted with removal of the sink and vanity and her partner was the person who communicated with the landlord in relation to most of the required repairs.

On November 2 or 3rd the landlord noticed that the tenant had removed the vanity from the bathroom; he then spoke with the tenant and told her he now had to repair the whole bathroom. The landlord then told the tenant to cease any work on the bathroom and that everything must be in writing. The landlord said he would investigate the supplies needed and would complete the work himself. The landlord had just purchased the home, so he did not have the funds needed to make repairs.

On November 8 the tenant sent the landlord an email in which she reported problems with the bedroom outlet that was sparking and another that did not work; a door knob to a bedroom was not working, the laundry room light malfunctioned; all items the tenant had asked the landlord to repair on November 1, 2010.

The November 8 email also asked the landlord to attend at the rental unit immediately as they had expected installation of a new toilet the day prior and that the tenant had removed the vanity. The tenant stated that the toilet had to be flushed 6 times before it would fully work. The tenant provided the landlord with a list of items he required for the bathroom such as shut-off taps, flooring, faucets and a tub. The tenant offered to assist

and asked that the work be completed within the next 24 hours as she had waited long enough for the work to be completed. The tenant was told that the work would be completed within 5 or 6 days.

On November 9 the landlord responded telling the tenant not to proceed with any renovation or repair work without his written permission and that, due to his work schedule the landlord would only be available on weekend for repair. An electrician was scheduled to attend at the unit on November 13, 2010.

On November 11 the tenant again emailed the landlord with a second written request for bathroom repair. The tenant indicated that the landlord had provided verbal approval allowing the tenant to install a new bathroom sink and tub. The tenant did not understand why the landlord failed to return to the unit on November 6 or 7 with a toilet and that the tenant and her partner had offered to assist in order to speed up the project.

On November 13 the tenant emailed the landlord reminding the landlord he was to return to the unit on November 7 so the tenant could assist with the bathroom repairs and to install a new toilet.

On November 11, 2010, the tenant made a written request that the garbage be removed; it was not removed until November 27, 2010. On November 15 the tenant asked the landlord to remove the garbage from the driveway, to repair the front door lock and to provide her access to the garage.

The tenant submitted that she went 17 days without the use of the tub or the bathroom sink, that she and her son were forced to use the kitchen sink, that the renovations had commenced with the landlord's permission, and that once written notice was given on November 9 to cease working on the unit, the landlord failed to ensure the bathroom was renovated in a reasonable period of time.

The landlord countered that the tenant dismantled the bathroom without his permission and that he did plan on making the repairs that had become necessary due to the unauthorized work completed by the tenant. The landlord stated that it was November 2 or 3rd that he became aware of the work the tenant had completed in the bathroom.

On November 16 the tenant responded in writing to the landlord and mentioned that she still did not have a working bathroom. The next day the landlord replied that he would install a new tub, toilet and cabinet and that work would commence on November 27.

The tenant then requested written notice of all entries the landlord planned on making to the rental unit; as the landlord had been found by the tenant's son on the property without any warning. The tenant told the landlord not to come to the unit the next day unless 24 hour notice was provided.

The tenant then told the landlord that from November 29 to December 3 she would be working in the home, providing child care, and that renovations could not occur during that time. The tenant moved out of the unit of November 29 and the tenancy has ended, effective November 39, 20910, by mutual consent.

The landlord did post notice for entry on November 27 and 29, 2010.

On December 1, 2010, the electrician made the required repairs, replacing the laundry light, repairing the kitchen sprayer and the bathroom fan.

The tenant and landlord are in dispute as to whether there was an agreement that the tenant could use the garage; the tenant stated she was to have use of a secure garage and that the landlord failed to provide that facility for her use.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to the tenant, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the tenant over the landlord.

I have based this analysis on the move-in condition inspection report that clearly indicated deficiencies in the bathroom, the photographs submitted by the tenant and on the absence of any comment made by the landlord in his written communication on November 9, 2010, that the tenant had commenced work on the bathroom that he had not authorized. On November 9 the landlord told the tenant to cease renovation and repair work, but there is no indication that leads me to believe the landlord had not previously reached a verbal agreement allowing the tenant to commence demolition work in preparation for installation of fixtures.

I also based this decision on the failure of the landlord to immediately provide the tenant with written notice to cease work when he first became aware of the bathroom demolition on November 2 or 3rd; it would have made sense, if the tenant were completing that work without the landlord's consent that the landlord would have immediately given the tenant an order to cease rather than waiting almost 1 week.

The landlord offered no indication in his November 9 note as to why the tenant must cease repairs or renovations, only that she should cease. I have accepted the tenant's version of the events, that there was verbal agreement that the tenant commence work on the bathroom and I also accept that the landlord then exercised his right to terminate that agreement.

Section 32 of the Act provides, in part:

> ***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.*

I find that the tenant was without the use of a full bathroom from November 2 to the time that she moved out on November 29, 2010. From the start of the tenancy the landlord was aware that the bathroom required repair and I find, from the evidence before me and on the balance of probabilities; that the landlord failed to take decisive steps to complete those repairs within a reasonable period of time.

I find that the use of a bathtub and bathroom sink are essential services required of a tenancy and that the loss of these items and the failure to complete repair entitles the tenant to reasonable compensation. I also find that the landlord failed to ensure that the wiring problems in the home were repaired within a reasonable period of time. The outlet was sparking and this was a safety concern that required a more immediate response from the landlord. The refuse in the driveway was not removed until November 27, 2010, despite the tenant's written request made on November 11, 2010. The tenant had a right to expect use of the driveway, which was not possible due to the presence of the refuse left by the landlord.

The patio deficiency and broken glass indicated on the move-in condition inspection report that should have been repaired and there is no evidence before me that this occurred.

Therefore, I find that the tenant is entitled to compensation for damage and loss under the Act, in the sum of $153.00, or 20% of the daily value of the tenancy, for a period of 17 days.

I find that the landlord did repair the washer and dryer within a reasonable period of time.

In the absence of a term in the tenancy agreement in relation to the use of the garage I find that use of the garage was not a term of the tenancy and that no loss has been incurred.

I find that the balance of the tenant's monetary claim is dismissed.

The landlord is holding a deposit in the sum of $300.00. The tenant is required to provide the landlord with a forwarding address in writing, at which point the landlord must comply with the provisions of the Act in relation to return of the deposit paid by the tenant.

Conclusion

The tenant has moved out of the rental unit and does not wish to proceed with her request for an Order of possession. The parties have mutually agreed that the tenancy ended effective November 30, 2010, and that rent has been paid in full for November. The tenant did not wish to proceed with the portion of her application to cancel the notices ending tenancy issued by the landlord.

As the tenancy has ended the balance of the tenant's claim for repairs was not required.

Based on these determinations I grant the tenant a monetary Order for $153.00 for damage or loss under the Act**.** 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 balance of the tenant's monetary claim is dismissed.

The deposit held in trust by the landlord must be disbursed as provided by the Act.

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: December 08, 2010.

Dispute Resolution Officer