



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, CNL, MNDC, OLC, RR, O

Introduction

This hearing was convened by way of conference call, having been adjourned from January 20, 2011 at the request of the tenant. A hearing was also convened on January 20, 2011 which dealt only with the tenant's application to cancel a notice to end tenancy for unpaid rent or utilities. The hearing on February 10, 2011 dealt with the remainder of the tenant's application: for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and the tenant's amended application for an order cancelling a notice to end tenancy for landlord's use of property. The tenant's application states that the landlord served an improper form for eviction and caused the tenant damages.

In my Decision resulting from the January 20, 2011 hearing, I granted an Order of Possession in favour of the landlords effective January 31, 2011 for unpaid rent. Therefore, the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is dismissed, as well as the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement. I do accept, however, the tenant has also claimed that the notice issued caused damages to the tenant, and I consider that claim in this Decision.

Both landlords and the tenant attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The tenant also provided an evidence package that was not submitted within the time allowed under the Rules of Procedure. The landlords opposed the inclusion of that late evidence, and I find that the landlords may be prejudiced by the inclusion of that evidence as they have not had the opportunity to be prepared to respond to that evidence. Therefore, that evidence is not considered in this Decision, however all other evidence and the testimony provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

I reiterate the background evidence as supplied during the hearing of January 20, 2011:

This month-to-month tenancy began on August 1, 2003 with this tenant and a co-tenant. Rent in the amount of \$1,293.00 per month is currently payable in advance on the 1st day of each month. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$560.00.

The tenant testified that the co-tenant left the rental unit due to the actions of the landlords. He further testified that he received a letter from the landlords after the co-tenant had given her notice, stating that it is a joint tenancy, meaning that both tenants would have to vacate the unit by January 31, 2011, and that both tenants were still bound by the tenancy agreement until January 31, 2011. He further testified that he needs a roommate to afford the rent, and was not able to find a roommate for one month, which would be required due to the landlords' letter. He feels that it will not be difficult to find a roommate and will be able to pay the rent for January and February in a few weeks time.

The tenant further testified that the landlord has entered the rental unit without giving proper written notice as required by the *Act*, and that difficulties caused by the landlord have been the contributing factor to the co-tenant vacating the rental unit, although he did not elaborate. He stated that the landlords issued the notice for landlord's use of property so they could do maintenance to the suite, and used the opportunity to evict him when his roommate moved out. He further stated that the tenants had been roommates for 13 years.

During the February 10, 2011 hearing, the tenant testified that the landlords had stated that they would have all of their construction material out of the garage within 3 weeks of the beginning of the tenancy, but the landlords continue to use the garage, and the space occupied by the landlords fluctuates from 30 to 50%. The tenancy agreement, a copy of which was provided in advance of the hearing does not include the garage, but rodents from the materials in the garage have infested the rental unit. He stated that he put out poison and traps, and the landlord cleaned out the garage in mid-September,

which reduced the rodents, but the respiratory problems flared up about a week later from the excrement. He stated that he was put on a ventilator and medication by his doctor from September to the beginning of November, 2010. He saw his doctor at the end of September and became bed-ridden for about 6 weeks, 3 of which were on a machine, and he suffered fever and congestion.

He further stated that he and his roommate had noticed mice in July or August, but he couldn't find where they were coming from. A building next door was having renovations being completed and he thought the mice were coming from there, but discovered they were nesting in the garage. He stated that the amount of feces found on the tables in the garage was startling. He further stated that he keeps bookshelves, boxes, organic vitamins and similar items in the garage. He denied that there is any sugar in the vitamins that might attract rodents.

The tenant further stated that the radiant heat in the floors does not work. He stated that extra suites within the building have over-loaded the plumbing that goes with that system and it won't push water to his floor. He runs 2 electric heaters, at no cost to him, but his bedroom is cold which affects his asthma. He also stated that the gas fireplace warms up the living room but not the rest of the house.

The tenant also stated that the back door light doesn't always work. The 2 illegal suites have affected the electrical, and no box has been installed for the additional suites. He stated that bulbs burn out too quickly, within 6 or 8 weeks, which is an alarm or indicator of electrical problems.

The fridge stopped making ice in 2003, and when he complained to the landlords, he was told that their fridge doesn't make ice either.

The tenant also stated that the gutters have been full since he moved in; water falls between the buildings and he can't sleep at night. The landlord drilled 4 holes in them, and water runs full time.

The tenant further testified that the house needs paint, the front window isn't installed properly, and the banister inside the primary exit door has been loose for 5 years.

The tenant claims \$25,000.00 or 25% of the rent collected.

The landlords testified that the garage was not part of the agreement and provided a copy of the tenancy agreement in advance of the hearing as evidence. The tenant asked to use a part of the garage space and the landlord agreed. The landlords also feel that perhaps the mice were attracted by the sugar or another ingredient in the vitamins kept in the garage by the tenant.

The landlords further testified that they respond to all tenants respecting heat and were not advised of any problems that were not dealt with.

The landlords also testified that the rental unit is a side-by-side duplex with suites in the lower level. The landlords only own one side, and therefore only part of the gutters. They further stated that if the tenant had told them that the gutters keep him awake, they would have reacted.

The ice machine was as expensive as a new fridge, and the landlords stated that they discussed it with the tenants who replied that it was not a problem.

Further, the landlords were not made aware of a loose banister by the tenants. They have been in the unit less than 10 times in 7 ½ years, and did not notice it, nor did the tenants tell them about it.

The landlords also testified that the window is the same on both sides of the duplex, and they have spoken to the owners of the other side and the parties have agreed to work together on it. They deny it is a safety issue; the other side has been inspected, and it needs an extra piece of flashing around the window. The windows do open, and the tenants have never mentioned to the landlord that they feel that their safety is an issue.

As for painting, the landlords testified that the tenants indicated that they wanted to paint the unit, and the landlords agreed to pay for the paint.

The landlords also provided proof of repairs completed, which includes repairs to the water main on October 1, 2010; a hose connection by a plumbing and heating company on October 15, 2010; installation of a water main from the city to the house on October 21, 2010. The landlords also provided notes including one dated November 17, 2010 stating that the tenant had told them that the heat wasn't working in the large bedroom; the landlord lit the pilot and the tenant called again on November 20, 2010 to say that the heat still was not working, and an invoice from a furnace company dated November 23, 2010 showing that boiler repair was completed. A note from the landlord dated November 24, 2010 states that the heat still does not work, and a note on November 25, 2010 stating that the landlord called the tenant, who responded that the heat was fine. On November 26, 2010 a chemical was added to the boiler by a furnace mechanical company. Repairs were also done to the pilot burner, pilot tubing and thermocouple on December 10, 2010.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of the damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

The *Residential Tenancy Act* states that:

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.

And further,

32 (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.

The tenancy agreement states:

"The landlord must provide and maintain the residential premises and residential property in a reasonable state of decoration and repair, making the residential premises and the residential property suitable for occupation by a reasonable tenant. The landlord must comply with health, safety and housing standards required by law.

"If the landlord is required to make a repair to comply with the above duties, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may seek an Arbitrator's Order under the Residential Tenancy Act for the completion and costs of the repair."

I have reviewed notes made by and provided by the landlords of issues that arose during the tenancy. I have no evidence to ensure that they are the only notes or the only issues that were raised by the tenants however the landlords have also provided invoices and receipts to support their evidence that they have not ignored the responsibilities of a landlord. It also appears from the evidence that the landlords reimbursed the tenants half of a month's rent in September, 2010 due to problems with the washer and dryer. I therefore accept the evidence of the landlords that they deal with issues with the rental unit as soon as they are advised of concerns from the tenants. I find that the tenant has failed to establish that the landlords have not complied with the *Act* with respect to maintaining a rental unit.

In the circumstances, I find that the issue of the rodents may have caused health issues for the tenant, although the tenant had underlying conditions prior. It is not clear in the evidence what attracted the mice, and I accept the evidence of the tenant that the amount of mouse feces on the table in the garage was startling. The landlords did not dispute that evidence. The tenant's testimony was that the mice were noticed in July or August, 2010, that he became ill in September and was bedridden for about 6 weeks. The landlords removed their items from the garage in mid-September. I further find that the tenant attempted to mitigate any damage by putting out poison and traps. I find that the tenant has established a claim for damages, and I find that half a month's rent is justified in the circumstances.

I further find that the real issue before me is the loss of a long-term roommate who shared the rent, which the tenant feels is the fault of the landlords, and that the landlords did not have to take the position that if one of the tenants left they would both have to leave. I also find that the tenant takes the position that he would have been able to pay the rent by finding another roommate if the landlord had not served the letters on the tenants that stated that the tenancy would end once the roommate moved out. However, the evidence also shows that the roommate gave her notice to move out on December 1, 2010, the landlords advised the tenants in writing that the tenancy remains in place with both tenants until the end of January, the notice to end tenancy for unpaid rent was issued for unpaid rent for the month of January, 2011, and the remaining tenant didn't pay any rent for that month prior to the issuance of that notice on January 2, 2011.

I further find that the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property refers to the letters issued by the landlord indicating that the tenancy will end when the first tenant moves out. The tenant feels that the landlords took that position conveniently to legally evict the remaining tenant so that they could use the unit for their own purposes or renovate without the necessity of giving the

tenants 2 months notice and one free month of rent. In the circumstances, I find that the tenant may have a valid point, but has failed to establish that the landlords had any bad faith intentions. The landlords stated, during the January 20, 2011 hearing, that they were not confident that the tenant would be able to pay the arrears and keep up the rental payments after the roommate moved out, and the proper notice to end tenancy was issued by the landlords for unpaid rent.

I also note that at the outset of the hearing it was established that the tenant owes the landlords \$1,293.00 in unpaid rent. I have no application before me from the landlords, and cannot issue an order with respect to that claim.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

With respect to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, I hereby grant a monetary order in favour of the tenant in the amount of \$646.50. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

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: March 4, 2011.

Residential Tenancy Branch