



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, MNR, MNDC, ERP, RP, RR

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a Notice to End Tenancy for unpaid rent and more time to make the application; a Monetary Order for cost of emergency repairs; and, damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to make repairs and emergency repairs; and, authorization to reduce rent. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing, I was informed that the bailiff was in the process of removing the tenant's belongings from the rental unit. I heard that the landlord had obtained a Writ of Possession based upon Order of Possession issued on February 8, 2011 and served upon the tenant on February 11, 2011. The tenant was of the position that the landlord had illegally obtained a Writ of Possession. I informed the tenant that I did not have the authority to stop the bailiff from fulfilling the duties he has been authorized to carry out. The tenant indicated that she wished to proceed with the remainder of the issues identified on her application despite the activity going on around her.

In making this application the tenant had filed to dispute a Notice to End Tenancy that she indicated was served on February 11, 2011; however, I determined that it was the Order of Possession that was served upon her on February 11, 2011. As a Notice to End Tenancy was subject to a previous dispute that has already been decided upon and enforced in the court, I determined there was no Notice to End Tenancy to be dealt with for this hearing.

I also determined that since the tenant was being removed from the rental unit it was no longer necessary to consider requests for a rent reduction or orders for repairs or emergency repairs to the rental unit. Rather, the remaining issues to deal with pertain to the tenant's monetary claims against the landlord. Accordingly, this decision deals with the tenant's monetary claims only.

Issue(s) to be Decided

Has the tenant established an entitlement to cost of emergency repairs?

Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced September 27, 2010. The tenant paid a \$400.00 security deposit. The tenancy agreement requires the tenant to pay rent of \$800.00 on the 1st day of every month. The tenancy agreement provides that the tenant is responsible for gas, hydro, phone and cable.

On February 8, 2011 the landlord was granted an Order of Possession and a Monetary Order based upon a 10 Day Notice to End Tenancy for Unpaid Rent dated January 2, 2011. The landlord was granted monetary compensation for unpaid rent and loss of rent for the period of January 1, 2011 through February 15, 2011. The tenant did not appear at that hearing but filed an Application for Review. The tenant's Application for Review was dismissed.

The tenant claimed compensation in the amount of \$1,500.00 in making this application. The landlord submitted that the tenant did not clearly identify the basis for her claim of \$1,500.00. The tenant was unable to clearly explain how she arrived at \$1,500.00 during the hearing. However, from the tenant's application and evidence the tenant had raised the following issues:

1. The rental unit was dirty when she moved in;
2. There is a large gap around an entry door;
3. The stove does not work properly and sparks;
4. The tenant was not provided a key for the door that adjoins a shared space with the basement unit and the tenant believes somebody has been in her unit;
5. The tenant was told there were two hydro meters and the tenant would have to pay her own hydro when in fact there is only one hydro meter and the tenant has been billed for hydro consumed by the basement suite tenant. The tenant submitted a copy of a BC Hydro statement indicating an outstanding balance of \$528.50
6. There was a flood in the rental unit at Christmastime for which the tenant paid a plumber \$508.92 on January 1, 2011.

The tenant submitted that the rental unit required extensive cleaning at the beginning of the tenancy.

The tenant submitted that there is a large gap around the door that lets cold air in and the tenant's utility bills are very high. The landlord acknowledged that the door required weather stripping and that the tenant could have deducted the cost of weather stripping from the rent.

The tenant testified that the landlord replaced the stove with a used one the used one does not work properly and sparks when you use it. The landlord testified that the replacement stove was tested to ensure it worked and after the tenant complained about the replacement stove the landlord could find nothing wrong with it.

The tenant testified she is unable to lock one of the entry doors as she was not provided a key by the landlord and the tenant suspects someone has gained entry into her unit by way of this door when it was left unlocked. The landlord testified that the last tenant left the key in a drawer in the rental unit but the tenant claims there was no key left for her. The tenant confirmed there is a front door for her to use but that the snow gets deep in front of the door.

The tenant testified that when she viewed the rental unit she was informed that she was to pay for her own utilities. Only after the tenancy agreement was entered into did the tenant learn that there is only one hydro and gas meter and that the tenant pays for the utilities consumed by the basement suite tenant as well. The tenant was of the position that this is grossly unfair to her and the utility bills have been extremely high. The tenant testified that in addition to the hydro bill submitted as evidence she also had an \$883.00 gas bill. The landlord responded by stating that the tenant agreed, in writing, to pay for the utilities as evidence by the tenancy agreement. The landlord testified that she never hid the fact there was only one hydro and gas meter and that the tenant could have very easily seen this from the outside of the house. The landlord also submitted that the rent payable by the tenant is well below market rent to reflect the increased utility costs for the tenant. The tenant disputed that her rent is below market value.

The tenant testified that she had plumbing issues with the kitchen sink and the plumbing fixtures in the bathroom which she complained about repeatedly to the landlord. The tenant would notice water leaks on the floor which she mopped up with towels and had to do dishes in the bathtub. Then the kitchen sink backed up, the bathtub would not drain and the toilet would not flush at Christmas time. The tenant testified that she tried calling the landlord to report the issue but the landlord did not answer the phone. The tenant called a plumber who attended the rental unit on Christmas day. The plumber's

bill was \$508.92 which the tenant paid on January 1, 2011. The plumber told the tenant that the repairs he made were temporary in nature and that more extensive plumbing work would have to be done to correct the improperly installed plumbing.

The landlord testified that the tenant did not try to phone her about the plumbing situation at Christmas time and that she was home during that period of time. The landlord testified that in February 2011 she did talk to the plumber who did the repair work on the rental unit and that it was her intention to get her own plumber in to do more work.

On March 3, 2011 another flood occurred in the rental unit. The tenant called the plumber who warned her that he would not attend unless he had assurance of payment. The tenant submitted that she was desperate for properly working plumbing especially since she has young children living in the house and she agreed to pay the plumber. On March 3, 2011 the plumber repaired the plumbing in the residential property and the tenant paid the plumber \$1,009.

I called the plumber as a witness during the hearing to verify the statements I had heard from the parties, determine the cause the plumbing problem, the extent of the work the plumber performed and the amount he was paid and by whom. I heard from the plumber that he is professionally certified plumber and I found him to be highly knowledgeable about the plumbing issues at the residential property and very credible.

The plumber described how he found urine and fecal contaminated water on the floor of the bathroom when he arrived at the unit on Christmas day. The plumber determined that the source of the problem is caused by the laundry being improperly connected to the plumbing for the rental unit which causes water to back up into the fixtures in the rental unit. On Christmas day, the plumber unclogged the bathroom fixtures and found a worn fitting on the kitchen sink which he temporarily fixed. Unclogging the fixtures did not resolve the larger issue of improper connections but made the fixtures useable on a temporary basis. The plumber confirmed that the tenant paid him the amount of \$508.92 invoiced for the work he performed Christmas day.

The plumber testified that he received a call from the tenant in mid-February and he heard from the tenant that the plumbing issues still existed. The plumber testified that he talked to the landlord on the telephone and informed the landlord of his findings and that his repairs were only temporary. On March 3, 2011 the plumber was called again by the tenant to deal with a second flood. The plumber confirmed that he advised the tenant he would not attend the property unless he was assured payment, which she gave to him. The plumber attended the property and performed extensive plumbing

work to rectify the problem which he described during the hearing. The plumber confirmed that he billed \$1,009.00 for the work he performed on March 3, 2011 and that the tenant paid him that amount.

The tenant had submitted a document in her evidence package that was given to her by the landlord (herein referred to as the Terms and Conditions document). The document is entitled "Terms and Conditions for Tenancy at [address of rental unit]" and it includes the following terms:

2. The arrangement for the Terasen gas bill is not up for negotiation, this was set out in the lease agreement signed by yourself. The BC Hydro bill is open for discussion, but will be ultimately decided upon by the landlord.
3. Minor flaws with the house can be brought up to the landlord, but the landlord may chose to not address those flaws. It is required that the landlord provides a safe house (example; the roof is not caving in or leaking, the walls are not falling down, and the floor is a safe condition) and a healthy house (examples; no mold or asbestos in the house). The condition of the house outside of those requirements are taken "as is" by the tenant.

[reproduced as written]

The document also contains the following statements:

"These terms and conditions are not up for discussion or negotiation" and;

"If you agree to these terms and conditions, this agreement needs to be signed by the tenant before January 1, 2011, or I the landlord will accept your refusal to these terms as your 30 day notice and you will need to vacate the premise by February 1, 2011."

During the hearing, the landlord did not indicate any willingness to compensate the tenant for hydro. I pointed out her statement in term number 2 to which the landlord responded that she only negotiates with people that pay their rent.

Documentary evidence considered for this decision included a copy of the tenancy agreement; the Terms and Conditions document given to the tenant by the landlord; the hydro statement and the plumbing bill paid January 1, 2011.

Analysis

Both parties have certain obligations under the Act. A tenant has the obligation to pay rent when due and by way of the landlord's previous Application for Dispute Resolution the issue of unpaid rent and loss of rent for January 1, 2011 through February 15, 2011 has already been decided upon. This decision does not alter those findings and the unpaid balance of the Monetary Order provided to the landlord remains enforceable against the tenant.

With this decision I must determine whether the landlord has violated the requirements of the Act, regulation or tenancy agreement; whether such a violation caused the tenant to incur damages or loss; and, whether the tenant took reasonable action to minimize her loss.

The landlord submitted that the tenant's monetary claim did not clearly identify the basis for seeking \$1,500.00 in compensation. Although the tenant's application and evidence is not well organized I found the details of dispute sufficient to identify the nature of the dispute. Given the specific reference to the hydro and plumbing bill I find it reasonable to conclude that the tenant's \$1,500.00 claim is comprised of \$528.40 for the hydro bill and \$508.92 for the plumbing bill with the balance of \$462.68 as compensation for the landlord's failure to repair and maintain the other items identified in the tenant's application.

One of the many obligations of a landlord is that the landlord prepares a written tenancy agreement that complies with the requirements of the Act. Upon review of the tenancy agreement prepared for this tenancy, I find that does not comply with several of the requirements of sections 12 and 13 of the Act. Where a landlord creates a non-compliant tenancy agreement, the terms agreed upon by the parties are enforceable provided the terms meet certain criteria as provided by section 6 of the Act. To be enforceable a term must:

- not be inconsistent with the Act or regulations,
- not be unconscionable, and
- expressed in a manner that clearly communicates the rights and obligations under it.

Section 3 of the regulations defines "unconscionable" for purposes of section 6 of the Act. It provides that a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

With respect to hydro, it was undisputed that the hydro bill included hydro consumed by the basement suite tenant and that the hydro bill was in the tenant's name solely. The landlord claims the rent payable by the tenant was below market rent and offset the added hydro costs for the tenant; however, the tenant disputed the landlord's assertion. I note that the tenancy agreement does not recognize that the parties discussed and agreed that the tenant would pay the hydro costs for the entire property in exchange for reduced rent and the landlord did not provide any documentary evidence that the rent payable by the tenant was below market value for my consideration. Therefore, I do not find sufficient evidence to accept the landlord's position that the tenant has been sufficiently compensated for hydro used by the basement suite tenant by way of reduced rent.

I find the requirement for the tenant to pay all of the hydro costs without an provision for an equivalent or reasonable offset to the added costs to the tenant to be unconscionable. Where a term is found to be unconscionable section 6 provides that the term is not enforceable. Therefore, I find the term that requires the tenant to pay for hydro to be unenforceable against the tenant and the tenant has established an entitlement to recover the amount claimed of \$528.40 from the landlord.

With respect to the plumbing bill paid by the tenant on January 1, 2011 I find as follows. The landlord has the obligation to repair and maintain a residential property pursuant to section 32 of the Act so that the residential property complies with 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. I find that having a working toilet and functional plumbing is required for occupation by a tenant and the landlord was obligated to repair and maintain the plumbing. I have insufficient evidence the landlord knew of the plumbing issues before the tenant started complaining of them and a landlord is entitled to a reasonable amount of time to respond to repair issues. If a landlord will not repair an item the tenant's recourse is to make an Application for Dispute Resolution seeking repair orders against the landlord. Costs for repairs taken on by the tenant are seldomly awarded without prior approval of the landlord or authorization from the director of the Residential Tenancy Branch except in the case of an emergency repair.

When an emergency repair arises, the tenant must make two attempts to contact the landlord by telephone and give the landlord a reasonable amount of time to respond to the emergency. If the landlord does not respond the tenant may proceed to have the emergency repair made and seek reimbursement from the landlord.

The Act defines emergency repair to include an urgent and necessary repair for health or safety reasons and includes the repair of damaged or blocked water or sewer pipes or plumbing fixtures. Upon hearing from the parties, including the plumber, I accept that the tenant required an emergency repair for the plumbing fixtures on Christmas day. It is also undisputed the tenant paid \$508.92 for that repair; however, the landlord and tenant were in dispute as to whether the tenant tried calling the landlord to report the problem.

I find the most compelling piece of evidence before me is the Terms and Conditions document described in the background. Although undated, the content of the document indicates it was given to the tenant before January 1, 2011. Except for term number 1 that requires the tenant to pay rent on time, I find the remainder of the document violates the requirements of the Act and is unconscionable for the tenant in several aspects. Clearly, the landlord's obligations to repair and maintain the residential property, as required by the Act, go far beyond what the landlord was willing to take responsibility for and communicated to the tenant in the Terms and Conditions document.

I find that the tenant could not occupy the rental unit without functional plumbing and a working toilet yet the document given to the tenant by the landlord indicates that the tenant must accept the state of the rental as is. Thus, I find that the Terms and Conditions document serves as the landlord's refusal to make repairs outside of what was indicated by the landlord as the landlord's responsibility. Given the wording of this document and in light of the situation the tenant faced with blocked plumbing lines, I find the tenant acted reasonably in concluding it was upon her to hire a plumber and have the plumber make the plumbing functional. Therefore, I find the Terms and Conditions document given to the tenant by the landlord violates the Act and the tenant's reliance upon it caused the tenant to incur damages and loss. By the authority afforded me under the Act, I award the tenant the cost of the plumbing bill dated January 1, 2011 in the amount of \$508.92.

Although the tenant did not provide a copy of the plumbing bill paid March 3, 2011 as evidence for this proceeding, upon hearing from the plumber and confirming the work performed and the amount paid by the tenant, and giving the landlord an opportunity to question the plumber and respond to the plumber's testimony, I have amended this application to include the tenant's request for additional compensation for \$1,009.00. I find that the expenditure of \$1,009 on March 3, 2011 in this matter was significantly related to the plumbing issues that were before me with this application. Considering my findings above and upon hearing from the parties and the plumber, who I found to be a highly reliable and credible witness, I am satisfied this amount was expended by the

tenant for an emergency repair. Therefore, I award the tenant a further \$1,009.00 for the emergency repair of March 3, 2011.

Finally, I award the tenant the remainder of the \$462.68 she is seeking as I am satisfied the landlord has breached the tenant's right to quiet enjoyment of the rental unit. Under the Act, a tenant is entitled to quiet enjoyment of the rental unit, including freedom from unreasonable disturbance and significant interference. Residential Tenancy Policy Guideline 6 provides examples of behaviour that form a basis to conclude there has been a breach of quiet enjoyment including:

- persecution or intimidation;
- forcing or coercing the tenancy to sign an agreement which reduces the tenant's rights; and,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

I also find that the Terms and Conditions document was an attempt by the landlord to get the tenant to agree to contract outside of the Act and if the tenant did not agree then the tenancy would end. I find that the document given to the tenant by the landlord an attempt to coerce the tenant to sign a document that would reduce the tenant's rights under the Act. Further, the landlord's failure to fulfill the landlord's obligation to repair and maintain the property impeded the tenant's ability to use and enjoy the rental unit.

In summary, the tenant has been awarded monetary compensation of \$2,509.00 comprised of \$528.40 for hydro, \$508.92 and \$1,009.00 for emergency repair costs and \$462.68 loss of quiet enjoyment of the rental unit. The tenant is provided a Monetary Order for this amount to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$2,509.00 to serve upon the landlord and enforce as necessary.

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: April 11, 2011.

Residential Tenancy Branch