Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, FF

Introduction

In response to the tenant's application, a hearing with both parties in attendance was convened on April 14, 2011. As proceedings were not completed after 90 minutes, the hearing was adjourned and reconvened on June 1, 2011. Both parties participated in the hearings and gave affirmed testimony.

A summary of events leading up to the hearing is set out in the Interim Decision dated April 27, 2011. Events include, but are not limited to, two separate requests for adjournment by the landlord which were granted, issuance of a decision following a hearing where the tenant was not in attendance, and a successful application for review of the aforementioned decision by the tenant.

In his application the tenant seeks a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement, and recovery of the filing fee.

In this decision, the term "tenant" is frequently cited in the plural, "tenants," as the dispute concerns both the tenant and his partner.

Issues to be decided

- Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy initially began in unit #1103 for a fixed term from June 1, 2010 to May 31, 2011. Monthly rent was $1,250.00, and a security deposit of $625.00 was collected.

As the tenant requested a unit facing Stanley Park, the parties reached an agreement arising from which the tenants relocated from unit #1103 to unit #701. In association with this relocation, pursuant to a written tenancy agreement the fixed term of tenancy is from September 1, 2010 to August 31, 2011. A manual notation on this second tenancy agreement appears as follows:

Use & Occupancy from Aug. 13 – 31st.

The amount of monthly rent and security deposit remain unaltered with the relocation. While the tenant's submission includes a description of miscellaneous concerns during the relatively short period of tenancy in unit #1103, the "dispute address" shown on the tenant's application is unit #701, and aspects of the application for compensation concern the period commencing from August 15, 2010, which is about the time when the tenants were given access to unit #701.

Both parties submitted detailed documentary evidence, gave considerable testimony, and engaged in extensive cross examination. Documentary evidence includes, but is not limited to, exchanges of e-mails between the tenants and agents representing the landlord, memorandums to the tenants from agents representing the landlord, photographs, previous decisions issued by the Residential Tenancy Branch in disputes involving this landlord and other tenants in the same building, and references to decisions issued by the Courts in British Columbia.

Analysis

There are 10 separate aspects to the tenant's application. Testimony and cross examination in regard to the first 2 were largely completed on April 14, 2011, while testimony and cross examination concerning the remaining 8 were finished on June 1, 2011. While all of the documentary evidence and testimony have been carefully considered, not all aspects of the documentary evidence or details of the respective arguments and submissions are set out here. A relatively concise presentation of all aspects of the tenant's application and my findings around each are set out below.

$2,812.00: *compensation for "continued stress and anxiety and for breach of quiet enjoyment," and "for having to cancel their honeymoon at the insistence of [the landlord]."*

In his affidavit the tenant sets out a range of concerns concerning the period while he occupied unit #1103. However, the compensation sought concerns occupancy of unit #701 and the period from August 15 to December 31, 2010, and is calculated on the basis of a 50% reduction in rent during that 4 and 1 half month period.

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides in part as follows:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline #6 addresses "Right to Quiet Enjoyment," and provides in part:

> Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
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> It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises….
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> A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behavior. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

I find that both parties experienced occasional frustration and aggravation arising from their numerous interactions, while the landlord undertook to complete tasks in #701. It is arguable that these tasks may have been completed earlier, had it not been for the challenges encountered by the parties in relation to finding mutually agreeable times when trades people could enter the unit. However, I find that there is insufficient evidence for me to conclude that there was anything resembling "repeated or persistent threatening or intimidating behavior" on the part of the landlord. Further, I find on a balance of probabilities that there is insufficient evidence that any discomfort or inconvenience suffered by the tenants was more than temporary, or that either were sufficient to justify entitlement to compensation.

As to cancellation of their honeymoon, I find that while the tenants may have considered certain possibilities for their honeymoon, there is no evidence of employer approved vacation applications, no evidence of booking(s) for flights or accommodation(s), and no evidence of related cancellation(s). In short, I am satisfied that the tenants were sufficiently pleased with #701 that they chose to find flexibility with their plans, including any that may have been contemplated for their honeymoon, in order to take possession of #701 on or about August 15, 2010. Further, had they not chosen to move into #701 on or about this time, there is insufficient evidence to support a proposition that they

surrendered any and all opportunities to request or select an alternative unit at some future date.

Following from all of the foregoing, this aspect of the application is hereby dismissed.

$225.00: *a "permanent rent reduction of $50.00 per month for the unfinished, scratched floors, retroactive to August 15, 2010."*

This amount was originally calculated on the basis of the 4 and 1 half month period from August 15 to December 31, 2010. During the hearing on April 14, 2011, the person assisting the tenants requested an upward amendment of this figure to reflect an ongoing reduction in rent after December 31, 2010, to which counsel for the landlord objected.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain,** and provides in part as follows:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Having carefully considered the documentary evidence and testimony on this particular matter, in short, I am satisfied that marks / scratches appearing on the hardwood floor do not either breach any of the above provisions, or diminish the value of the unit in any manner that justifies compensation.

I also note that marks / scratches have been documented on the move-in condition inspection report. In the result, on the occasion of the move-out condition inspection and completion of the accompanying report, both parties will have documentary evidence of the existence of certain marks / scratches at the time when tenancy began.

This aspect of the application is, therefore, hereby dismissed.

$510.00: *compensation for "the loss of use of their broken dishwasher."*

This amount is calculated in relation to the period from "September 18 to December 29 (RTB hearing date)" on the basis of $5.00 per day over 102 days.

Section 7 of the Act which addresses **Liability for not complying with this Act or a tenancy agreement**, provides in part:

> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenant does not dispute that the first occasion on which the landlord was informed of this concern, was at the hearing on December 29, 2010. The tenant asserts that as a result of the landlord's "egregious response" to "other repair requests," the tenant "decided not to report the broken dishwasher until the date of the [hearing,]"

In view of the tenants' repeated expression of concern to the landlord about a range of matters, I am not convinced that delay in reporting the broken dishwasher arose from being troubled by the landlord's allegedly "egregious response" to "other repair requests." Rather, I am persuaded that any inconvenience was either only nominal or minimal. In any event, there does not appear to be any dispute that after the landlord was apprised of the problem, it was remedied in a timely manner.

For all of the above reasons, this aspect of the application is hereby dismissed.

$495.00: *compensation for "the broken thermostat."*

This amount is calculated in relation to the period from September 15 to December 29, 2010, on the basis of $5.00 per day over 99 days.

For reasons similar to those set out immediately above, this aspect of the application is hereby dismissed.

$132.01: *compensation (reimbursement) for "lost wages."*

This amount is claimed "as a result of [the landlord's] second adjournment request due to the unavailability of their lawyer to attend the hearing scheduled January 24, 2011."

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute.

As to any consideration of this as a claim in damages, I find there is no evidence that the landlord's request for an adjournment was the result of willful or reckless indifferent behavior. In the result, this aspect of the application is hereby dismissed.

$22.50: *compensation (reimbursement) for "3 return skytrain fares spent for travel to the RTB hearing on January 24" for the tenant, his wife and the person assisting them.*

Further to the reasons set out immediately above opposite "$132.01," I find that as there is no statutory provision for awarding the compensation sought, this aspect of the application is hereby dismissed.

$258.00: *a "permanent rent reduction of $1 per day" arising from a concern that "the mirrored medicine cabinet in our bathroom is smaller than everyone else's."*

This amount was originally calculated in relation to the period from August 15, 2010 to April 30, 2011.

The documentary evidence and testimony in regard to the size of the mirror on the medicine cabinet is considerable. Briefly, it is understood that while there are mirrors in some units which measure 30 inches, the mirror in unit #701 measures 24 inches. In part I must therefore conclude that the tenant's mirror is not in fact "smaller than everyone else's." As well, it is understood that a "standard" mirror size is 24 inches. Further to the absence of any mention of mirror size on either of the 2 residential tenancy agreements or the move-in condition inspection report, while the tenant's preference is clearly to have a mirror measuring 30 inches, there is no documentary evidence which conclusively supports a claim that assurances were provided to the effect that a mirror measuring 30 inches would be provided in unit #701.

Section 27 of the Act addresses **Terminating or restricting services or facilities** and provides in part as follows:

> 27(1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

I find that the provision of a 24 inch size mirror as opposed to a 30 inch size mirror, does not contravene the above statutory provisions.

For all of the aforementioned reasons, this aspect of the application is hereby dismissed.

$25.00: *reimbursement by the RTB for the review application fee "filed as a result of the RTB's failure to update their database with our correct address."*

Further to the reasons set out above opposite "$132.01" & "$22.50," I find that as there is no statutory provision for awarding the compensation sought, this aspect of the application is hereby dismissed.

$7.50: *reimbursement by the RTB of "2 return fares spent for travel to the RTB to file the review application" for the tenant, his wife and the person assisting them.*

Further to the reasons set out above opposite "132.01" & "$22.50" & $25.00," I find that as there is no statutory provision for awarding the compensation sought, this aspect of the application is hereby dismissed.

$50.00: *filing fee*. As the tenant has not succeeded with this application, the aspect of the application concerning recovery of the filing fee is hereby dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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*.

DATE: June 30, 2011

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Residential Tenancy Branch