



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, RR, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement, to recover the cost of emergency repairs, to recover the filing fee for this proceeding and for a rent reduction due to the Landlord's alleged failure to complete repairs that were agreed to in writing.

The Tenant provided Canada Post receipts as proof that she had served the Landlord with her Application and Notice of Hearing (the "hearing package") and with her evidence package. The Canada Post online tracking system indicates that the Landlord received and signed for the hearing package on July 28, 2011 and for the evidence package on August 16, 2011. The Landlord claimed on the first day of hearing, however, that he had not received the 2nd piece of registered mail containing the Tenant's evidence. I find on a balance of probabilities that the Landlord did receive the Tenant's evidence package. However given that this matter had to be reconvened following the first day of hearing, a further copy of the Tenant's evidence package was made available for the Landlord as a courtesy, at the Burnaby Residential Tenancy Branch. The Landlord was contacted by an information officer on August 31, 2011 to advise him that he could pick up this copy of the evidence package but he did not do so.

At the end of the 1st day of hearing, the Parties were advised of the new date and time of the reconvened hearing and Notices of the reconvened hearing were mailed to each of the Parties on August 24, 2011. The Landlord did not attend the reconvened hearing via conference call. I find that the Landlord had notice of the reconvened hearing and as a result, the hearing continued in his absence.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to a rent reduction?

Background and Evidence

This month-to-month tenancy started on July 1, 2011. Rent is \$1,100.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy. The Parties signed a written tenancy agreement on June 13, 2011 which states in part as follows:

"[the Landlord] agrees to the following repairs and improvements to be made to the suite referenced above, to the satisfaction of the tenant, prior to the tenant taking occupancy on July 1, 2011 unless otherwise stated here:

- Have the unit and appliances professionally cleaned by cleaners and balconies pressure washed to remove algae and dirt;
- Door handle on master bedroom closet installed (with keyed lock if possible);
- Restore function of front hallway closet doors;
- Patch and paint entire apartment unit Swiss Coffee colour paint, sample provided by tenant;
- Hardwood flooring installed in living area/den and hallways...Remaining carpeted areas to be shampooed;
- Supply patio screen doors for both sets of sliding glass doors to balconies; and
- Window blinds in reasonable good condition and not broken."

The Tenant said the day she was to move in, the Landlord demanded that she pay the 1st month's rent in cash. The Tenant said that when she arrived at the rental unit on July 1, 2011, it was dirty and in a state of disrepair; in short, few of the things the Landlord agreed to do had been done. The Tenant said the unit and carpets had not been cleaned and there was vomit on at least 2 of the bedroom carpets. The Tenant said the suite had been partially painted however there were still holes in the dining room wall, stains on the ceiling and the baseboards had not been re-installed. The Tenant said she contacted the Landlord the following day to advise him about the condition of the rental unit and told him that she needed a key to the mail box and elevator and access to the garage. The Tenant said the Landlord told her to that she would have to arrange to get a key to the mail box and elevator and access to the garage. The Tenant said the Landlord also told his handyman, D.M., on July 2, 2011 (in her presence) to do no further painting because he did not think it was required. The Tenant said the Landlord told her to hire some cleaners and that he would come to the rental unit and pay them. The Tenant said the cleaners came on July 4, 2011 but the Landlord did not come to the rental unit that day and he later advised the cleaners that the Tenant would have to pay for their services.

The Tenant said she had to pay the Landlord's handyman, D.M., to do further cleaning, to remove the lock from the mail box (so she could get her mail) and to hang screen doors which she purchased. The Tenant said she purchased the screen doors because it was too hot in the suite to leave the glass doors closed and she could not leave them open because there was evidence of rodents on the outside patio. The Tenant said the patio was also covered in algae and mould, so she hired someone to power wash it at her expense. The said she also incurred expenses to shampoo the carpets, to clean blinds, to purchase more paint for the walls (because the Landlord only purchased 2 cans) and for the fireplace, to purchase light bulbs and to have an elevator key made.

The Tenant said she also discovered that the garbeurator was broken and that the master bedroom sink was clogged. The Tenant also said that the first time she used

the washing machine she was advised by the occupant of the suite below her that water was flooding into his suite. The Tenant said she advised the Landlord about this problem on a number of occasions but he has done nothing about it and as a result she is unable to use the washing machine. The Tenant said she is unable to get access to the garage without the Landlord's written authorization to the Strata. The Tenant also said she is unable to get her mail delivered to the rental unit until a new lock is installed on the mail box.

The Tenant also sought compensation as she claimed the rental unit was in such poor condition during the 1st two weeks of the tenancy that she had to send her child somewhere else to live. The Tenant said that during this period of time, she had to leave work several times to deal with cleaners and other contractors. The Tenant said to date she has also lost the use of her washing machine, the mail box and parking all of which are included in her rent. The Tenant said it has been a very stressful on both her and her daughter trying to get the Landlord to comply with their agreement.

During the 1st day of the hearing, the Landlord said he was unaware if the cleaning and repairs had been done and claimed that his handyman told him that he had painted the whole unit. The Landlord said he did not know if there was a plumbing leak or not. The Landlord also claimed that while the suite was not "a 5 star hotel" it was still "liveable." The Landlord also said that he had a new lock for the Tenant's mail box and would install it. The Landlord agreed that following the first day of hearing he would inform himself as to whether the repairs sought by the Tenant had been done or not. The Landlord then claimed that he didn't have any money to pay the Tenant, no longer wanted to deal with her "whining" and would evict her or alternatively would increase her rent if he had to make repairs.

Analysis

I find that the Parties entered into a tenancy agreement on June 13, 2011 in which the Landlord agreed to have the rental unit professionally cleaned, repaired and repainted prior to the Tenant moving in on July 1, 2011.

The Landlord did not do a move in condition inspection report and he said he had no knowledge if cleaning and repairs had been completed. In any event, the Landlord argued that the rental unit would have been "liveable." The Tenant argued that the rental unit was not fit for occupation at the beginning of the tenancy. The Tenant provided photographs of the rental unit that she said she took at the beginning of the tenancy. The Tenant also provided written statements of the cleaners who attended the rental unit on July 4, 2011 and recorded their observations of the suite on that day. The Tenant further provided copies of correspondence she said she sent to the Landlord dated July 3, 4, 5, 11, and 13, 2011 requesting that he deal with the cleaning and repairs. In the absence of a move in condition inspection report or any reliable evidence from the Landlord, I find that the Tenant's evidence is the best evidence of the condition of the rental unit at the beginning of the tenancy.

Based on the evidence of the Tenant, I find that the Landlord did not fulfill his obligations under the tenancy agreement. In particular, I find that the Landlord installed hardwood flooring and had the unit partially painted, however I find that the Landlord failed to do any of the other things he agreed to. Consequently, I find that the Tenant is entitled to be compensation for the following expenses she has incurred or is liable to pay:

- Professional Cleaning (4 hours by Time for you Cleaners): \$474.66
- Additional Cleaning (5 hours by D.M.): \$100.00
- Balconies power washed: \$100.00
- Carpet Cleaning: \$100.00
- Blind Cleaning: \$170.00
- Patio Screen Doors: \$159.02
- Wall Paint: \$55.52
- Fireplace Paint: \$16.65
- Painting supplies: \$17.89 (\$12.28 + \$5.61)
- Light Bulbs: \$13.41
- Elevator Key: \$8.49
- Labour by D.M. to install screens and remove mailbox lock: \$50.00

I find that there was no agreement that the Landlord would provide the Tenant with mouse traps or rodent repellent devices and as a result, I find that the Tenant is not entitled to compensation for those items. I also find that there is insufficient evidence to support the Tenant's claim to recover expenses for cabinet knobs and that part of her claim is also dismissed without leave to reapply. Consequently, I find that the Tenant is entitled to be compensated for her expenses of **\$1,265.64**.

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." Section 27 of the Act says that if a Landlord terminates or restricts a service or facility that is a material term of a tenancy agreement, the Landlord must reduce the Tenant's rent by an amount that is equivalent to the value of the lost service or facility.

The Tenant also sought compensation for the stress caused to her and her child by moving into the rental unit when it had not been cleaned and repaired. The Tenant said her child had to live elsewhere for a period of 2 weeks and she was also put to great inconvenience by having to arrange for cleaning and repairs to make the suite habitable. The Tenant further said the repairs agreed to by the Landlord have still not been completed and she has not had the use of the washing machine, mail box or garage which is included in her rent.

I find that as of the date of the hearing, the Landlord has failed to repair holes in the living room wall or to complete the painting of the entire rental unit as he agreed to do. I

also find that the Landlord has failed to re-install baseboards, to repair the closet door knob in the master bedroom and to repair 2 hallway closet doors. I further find that the Landlord has failed to repair the plumbing for the Tenant's washing machine, the garbeurator and the master bedroom sink with the result that they cannot be used. I also find that the Landlord has failed to provide the Tenant with parking access and a secure mail box which are facilities included in her rent. During the first day of the hearing the Landlord made it clear that (with the exception of the mail box lock), he had no intention of addressing any of the Tenant's concerns. The Tenant said on the 2nd day of the hearing that the Landlord has still not installed a mail box lock.

I find that the Landlord failed to provide the Tenant with a rental unit that was clean and in a good state of repair which is required of him under s. 32(1) of the Act. I also find that the Landlord failed to provide the Tenant with laundry facilities, parking and a mail box which is included in her rent. Consequently, I find that the Tenant is entitled to a rent reduction of \$700.00 for the month of July 2011 and to a rent reduction of \$400.00 for each of August 2011 and September 2011 for a total of **\$1,500.00**. ***I further order that if the Landlord fails to make all of the following repairs and restore all of the following services by October 31, 2011, the Tenant will be entitled to deduct \$400.00 from her rent for November 1, 2011 and for each month thereafter that the repairs remain unfinished and services unavailable:***

- Dining room wall repairs;
- painting of the entire unit;
- baseboard installation;
- closet doors repaired;
- mail box lock replaced; and
- access to the parking garage

At the 2nd day of the hearing, the Tenant sought an order permitting her to make repairs and deduct the cost of them from her rent however her application did not include a claim for this relief. Nevertheless, I find that there are plumbing issues that must be addressed because they pose a potential risk of damage to the rental property and as a result, ***I order pursuant to s. 62(3) of the Act that if the Landlord has not repaired the washing machine leak, the plugged drain in the master bedroom and the garbeurator by October 7, 2011, the Tenant may re-apply for an Order authorizing her to make those repairs and deduct the cost of them from her rent.***

The Tenant also sought to recover registered mail, photocopying and photograph expenses, however the Act does not provide for the reimbursement of costs to prepare for a dispute resolution hearing and as a result, this part of the Tenant's claim is dismissed without leave to reapply. The Tenant is entitled pursuant to s. 72(1) of the Act to recover from the Landlord the **\$50.00** filing fee she paid for this proceeding. Consequently, I find that the Tenant has made out a total monetary claim for **\$2,815.64**.

I order pursuant to s. 65(1) of the Act that the Tenant may deduct this monetary award from her future rent commencing November 1, 2011 as follows:

- \$700.00 from November 2011 rent;
- \$700.00 from December 2011 rent;
- \$700.00 from January 2012 rent;
- \$700.00 from February 2012 rent; and
- \$15.64 from March 2010 rent.

This rent reduction is in addition to any further rent reduction to which the Tenant may be entitled if the Landlord fails to restore services and make the repairs set out above. For example,

- the Tenant will be entitled to deduct \$700.00 from her rent for November 2011. If the repairs are not completed and services restored by the Landlord ***in full*** by October 31, 2011, then the Tenant will be entitled to deduct a further \$400.00 from November 2011 rent for October's loss of use of the rental unit and the services and facilities the Landlord agreed to provide for a total of \$1,100.00 (therefore no rent payment would be made for that month). However, if the Landlord complies with the above-noted order, then the Tenant's rent for November 2011 will be \$400.00.
- the Tenant will be entitled to deduct \$700.00 from her rent for December 2011. If the repairs are not completed and services restored by the Landlord ***in full*** by November 30, 2011, then the Tenant will be entitled to deduct a further \$400.00 from December 2011 rent for November's loss of use of the rental unit and the services and facilities the Landlord agreed to provide for a total of \$1,100.00 (or no rent payment for that month). However, if the Landlord completes all of the repairs and supplies all of the services by November 30, 2011, then the Tenant's rent for December 2011 will be \$400.00.
- the Tenant will be entitled to deduct \$700.00 from her rent for January, 2012. If the repairs are not completed and services restored by the Landlord ***in full*** by December 31, 2011, then the Tenant will be entitled to deduct a further \$400.00 from January 2012 rent for December's loss of use of the rental unit and the services and facilities the Landlord agreed to provide for a total of \$1,100.00 (or no rent payment for that month). However, if the Landlord completes all of the repairs and supplies all of the services by December 31, 2011 then the Tenant's rent for January 2012 will be \$400.00.
- the Tenant will be entitled to deduct \$700.00 from her rent for February 2012. If the repairs are not completed and services restored by the Landlord ***in full*** by January 31, 2012, then the Tenant will be entitled to deduct a further \$400.00 from February 2012 rent for January's loss of use of the rental unit and the services and facilities the Landlord agreed to provide for a total of \$1,100.00 (or

no rent payment for that month). However, if the Landlord completes all of the repairs and supplies all of the services by January 31, 2012, then the Tenant's rent for February, 2012 will be \$400.00.

- the Tenant will be entitled to deduct \$15.64 from her rent for March 2012. If the repairs are not completed and services restored by the Landlord **in full** by February 29, 2012, then the Tenant will be entitled to deduct a further \$400.00 from March 2012 rent for February's loss of use of the rental unit and the services and facilities the Landlord agreed to provide for a total of \$415.64 (or for a rent payment of \$684.36). However, if the Landlord completes all of the repairs and supplies all of services by February 29, 2012, then the Tenant's rent for March, 2012 will be \$1,084.36.
- If all of the repairs are not completed and all of the services are not restored **in full** by the Landlord by the last day of each month thereafter, then the Tenant will be entitled to pay a reduced rent of \$700.00 for the following month.

If the Tenant is unable to satisfy the compensation order by deducting the total amount from her rent (eg. if the tenancy should end before March 2012), she may re-apply for a monetary order for the balance of the compensation order.

At the hearing, the Landlord stated in response to the Tenant's application that he would serve her with a Notice to End Tenancy or increase her rent. However, the Landlord was advised by the Dispute Resolution Officer at the hearing and is now also given written notice that s. 95(2) of the Act makes it **an offence subject to a penalty** for one party to coerce, harass or intimidate another party in retaliation for seeking or obtaining a remedy under the Act.

Conclusion

The Tenant's application is granted in part on the above-noted terms. 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 28, 2011.

Residential Tenancy Branch