



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, ERP, RP, PSF, LRE, LAT, RR

Introduction

This hearing dealt with an application by the tenant for money owed or compensation due to damage or loss, return of the security deposit, for the landlord to comply with the Act, for the landlord to make emergency repairs, for the landlord to make repairs, for the landlord to provide services, suspend or set conditions on the landlord's right to enter, authorize a tenant to change the locks and allow a tenant to reduce rent for repairs. Both parties participated in the conference call hearing.

Preliminary Issue(s) to be Decided

The parties named by the tenant on the Schedule of Parties: Pinnacle International Inc., Alex Cioara and Balazs Szebenyi state in documentation that they should not be personally named as respondents for the tenancy at the dispute address and request that their names not be attached to the tenant's claim. It was verified that the landlords to be named in this application are Shaughnessy Management Inc., and Pinnacle International Inc.

As this tenancy ended on March 14, 2012, the tenants claim for the landlord to comply with the Act, for the landlord to make emergency repairs, for the landlord to make repairs, for the landlord to provide services, suspend or set conditions on the landlord's right to enter, authorize a tenant to change the locks and allow a tenant to reduce rent for repairs are hereby dismissed without leave to reapply as there is no tenancy on which to enforce these actions.

Background and Evidence

This fixed tenancy began November 1, 2011 with monthly rent of \$875.00 and the tenant paid a security deposit of \$225.00.

Matters related to this tenancy were heard February 28, 2012; the hearing dealt with cross applications by the landlord and tenant. The Dispute Resolution Officer ruled in favour of the landlord and granted the landlord an order of possession and monetary

order for unpaid rent. The tenant belongings were then removed from the rental unit on March 14, 2012 by bailiffs, under a writ of possession order.

Security Deposit

The tenant testified that she has not yet provided the landlord with a forwarding address for return of the security deposit. The tenant stated that the landlord could use the dispute address as her forwarding address and could have used this same address for service of documents however the tenant has not yet applied to have her mail forwarded by Canada Post. The tenant also commented that the landlord could have phoned the tenant and requested a forwarding address.

It is the tenant's responsibility to provide the landlord with a forwarding address in writing and request return of the security deposit. Then, if the landlord does not return or claim against the security deposit within 15 days of receipt of the forwarding address, the tenant may submit an application for return of the security deposit. As the tenant has not yet provided the landlord with their forwarding address in writing, this portion of the tenant's application is dismissed with leave to reapply.

Monetary Claim

The landlord testified that during the tenancy there were on-going issues with noise, the tenant removing electrical fixtures and plumbing issues due to the tenant flushing paper towels down the toilet. The landlord stated that the tenant did not pay the full security deposit as required by the Act, the December 2011 rent cheque was returned NSF and the tenant did not pay the January, February or March 2012 rent.

The landlord stated that after the tenant was served with a notice to end tenancy that the tenant started to make complaints regarding the heat, tenants smoking, noise from the laundry room etc.

The tenant testified that the temperature in the rental unit went as low as 45f and that if you did not stand by the radiator there was no heat and no way to stay warm. The tenant maintained that the halls, bathroom, bedroom and closets in the rental unit were all very cold. The tenant stated that she did not use a space heater as staff from BC Hydro had advised her that her electricity bill would 'sky rocket'.

The landlord stated that after receiving a complaint from the tenant regarding the temperature in the rental unit the landlord went to the rental unit and verified that the temperature was 25c. The landlord stated that the entire building is heated by one large boiler and the landlord has not had complaints regarding the heat from any other tenants.

The tenant stated that she was without a toilet for 3 days and no tub for 11 days. The landlord responded by stating that they had noticed a leak 3 days after the tenant had moved in and when they investigated, they found that the tenant had plugged the toilet

with paper towels; the landlord stated that the toilet was fixed that same day. The landlord also stated that there were no issues with the tub and no additional issues with the toilet.

The tenant stated that tenants all throughout the building smoke and the landlord does nothing about it. The tenant stated that people stand in front of the building doors smoking and that the landlord has not posted signs to keep back 6 metres from the doors and windows. The landlord stated that all tenants in the building have signed an agreement to not smoke in the building and that the landlord has never found tenants smoking inside. The landlord stated that when he sees people outside but near the building doors smoking he asks them to move away from the area.

The tenant also stated that there was constant noise from the laundry room which the landlord did nothing about. The landlord referred to a photograph that shows a sign for the laundry room with hours of 9:00AM to 9:00PM; the tenant responded that this notice had not been posted until February 2012. The landlord stated that the tenant came and looked at the rental unit on 3 different occasions, had been very happy with it and that the tenant was very aware of the location of the unit in the building

The tenant stated that a tenant in the building who owned a truck also disturbed her peace and quiet enjoyment as he would turn on his headlights which would shine briefly on the tenant's windows.

The tenant stated that the landlord mis-represented the building and rental unit to the tenant and this is a typical of this landlord. The tenant stated that due to her medical conditions the lack of heat and cigarette smoke compromised her health even more and that she would never have rented here if the landlord had been truthful. The tenant went on to state that if the landlord had agreed to let her out of her lease or reduce her rent, these matters could have been resolved.

The tenant referred to numerous other issues which had no bearing on this matter such as people not knowing the tax act, being a victim of a crime and Russian criminals residing in the building. The tenant also refuted the landlord's testimony as all being false.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for a lack of heat in the rental unit, services or facilities not provided or disturbance of the tenant's peace and quiet enjoyment.

The landlord testified that they attended the rental unit and verified the heat in the tenant's rental unit to be 25c which is above the City of Vancouver bylaw guideline of

22c. The landlord has submitted a photograph of the thermostat in the tenant's rental unit which shows the temperature to be 25c. The tenant relies specifically on their oral testimony and has not provided any supporting evidence such as dates when the heat was below 22c or witness statements from other tenants in the building who also had issues with the temperature. The tenant has also not provided a witness statement from a professional to verify below standard heat in the rental unit.

In regards to the plumbing in the rental unit not working, the landlord has submitted evidence which is a copy of a warning letter to the tenant regarding the tenant plugging the toilet with paper towels. The landlord testified that the problem was also fixed the same day it came to their attention. As the issues with the plumbing were a result of the tenant's actions, the tenant is not entitled to compensation.

In regards to the faulty lighting, the landlord has submitted a photograph and copy of a warning letter to the tenant regarding the tenant disconnecting electrical fixtures and creating a fire danger in the rental unit. As the issues with the electrical fixtures were a result of the tenant's actions, the tenant is not entitled to compensation.

The tenant's claim that the landlord committed fraud and grossly misrepresented the rental unit and that because if this the tenant's already compromised health was compromised even more. It must however be considered that when a person has health issues, that they be responsible for ensuring that their living accommodations meet their needs and it is unreasonable to assign this responsibility to the landlord who has at best, limited knowledge of the tenant's medical concerns. It must also be noted that the tenant viewed the rental unit and building no less than 3 times prior to entering into a tenancy agreement and was very aware of the rental unit and its surroundings.

The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is 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*.

Dated: March 28, 2012

Residential Tenancy Branch