Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, CNC, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause, for a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

One of the named landlords and the tenant attended the conference call hearing and gave affirmed testimony. The landlord also provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenant. Although the tenant did not agree that the evidence was provided within the time allowed under the Rules of Procedure, the tenant did not oppose inclusion of that evidence. The tenant stated that the landlord's evidence was received on June 6, 2012 and was asked if an adjournment would provide the tenant with the ability to review the landlord's evidence, and the tenant declined. The tenant provided evidence prior to the hearing but did not provide it to the landlord. The landlord did not oppose the inclusion of the tenant's evidence. All evidence and testimony provided has been reviewed and is considered in this Decision.

Further, at the outset of the hearing, the tenant advised that the proceeding was being recorded and was cautioned that recording was not permitted under the *Act* and was asked to turn off any recording equipment. The hearing commenced after the tenant advised that the recording device was in fact turned off.

During the course of the hearing, the tenant advised that the rental unit is now vacant, and that the tenant moved from the rental unit on June 10, 2012. Therefore, the application of the landlords for an Order of Possession is hereby dismissed without leave to reapply. Similarly, the tenant's application for an order cancelling a notice to end tenancy is hereby dismissed without leave to reapply. The tenant denies that the

landlord had cause to issue a notice to end tenancy, however, the hearing focused on the remaining applications of the parties.

Issue(s) to be Decided

The issues remaining to be decided are:

- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?

Background and Evidence

The parties agree that this fixed term tenancy began on November 1, 2011 and expires on November 1, 2012. Rent in the amount of $1,100.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $550.00 as well as a utilities deposit in the amount of $100.00. Both deposits are still held in trust by the landlord. The landlord did not know the date that the tenant vacated the rental unit, but the tenant provided testimony during the course of the hearing that the tenant moved from the rental unit on June 10, 2012.

The landlord testified that the tenant owes utilities in the amount of $363.05, and the tenancy agreement, a copy of which was provided for this hearing, provides that the tenant pay 25% of the utilities. The tenant had given the landlord a rent cheque for the month of June, 2012 but the landlord subsequently discovered that the tenant had placed a stop-payment on that cheque.

The landlord claims $1,100.00 for June's rent, $363.05 for utilities, and a pro-rated amount for utilities up to June 12, 2012, being the date of this hearing.

Copies of 4 utility bills were provided for the hearing. The first is a water/sewer and waste utility bill covering the period of January 1, 2012 to March 31, 2012 in the amount of $433.43. The bill also shows that the previous bill amount was $358.73. The next bill is a Fortis Natural Gas bill in the amount of $237.53 which covers the period of February 29, 2012 to March 29, 2012. The bill shows that the previous amount was $272.65. The next bill is also a Fortis Natural Gas bill covering the period of March 29, 2012 to May 1, 2012 in the amount of $183.47. The bill also shows that the previous bill was

$237.53. The final bill provided is a BC Hydro bill in the amount of $597.77 covering the period of April 1 to May 1, 2012, and the previous bill was $566.04.

The landlord further testified that the amount claimed for utility bills not yet received are pro-rated amounts, calculated as follows:

- Water: The bill provided works out to $1.20 per day for 73 days from March 31 to June 12, 2012, equals $87.60;
- Fortis Gas: The landlord took the lower bill and calculated $1.39 per day for 42 days from May 1 to June 12, 2012, equals $58.38;
- BC Hydro: The bill provided amounts to $2.41 per day and the landlord claims 42 days from May 1 to June 12, 2012, equals $101.22.

The landlord claims $610.24 for all utilities up to June 12, 2012, although acknowledging that nothing in the tenancy agreement provides for pro-rating utilities.

The landlord further testified that the tenant had complained about the behaviour of the tenants in the upper rental unit, but provided no evidence, and that the landlord cannot act on complaints without evidence. Further, the landlord gave the tenant a warning letter on March 22, 2012 regarding a noise complaint. A copy of that letter was provided for this hearing, and a copy of a warning letter in almost the identical wording was also sent to the tenants in the upper suite on the same date.

The landlord provided copies of numerous emails to illustrate that the tenant complained about noise and interruptions from the tenants in the upper suite. The emails also include statements from the tenants in the upper suite that the tenant turned on the TV very loudly on many occasions as well as allowing the tenant's car alarm to sound at night, in retaliation to what the tenant believed to be deliberate attempts to disturb the tenant.

The evidence also includes an email from a person who was apparently a tenant previously in the tenant's rental unit. The email specifically states: "The noise isn't really anything (the upstairs tenants) can do anything about. They are just walking normally, talking, and closing doors normally. Also the pipes make loud noises when the water is turned on upstairs. I think the bath water pipe upstairs might be the only one, and this might be easy to fix at the same time as the insulation but I'm not sure."

Also provided are occurrence reports from police. The first of those reports states, "...attended the upstairs apartment and spoke to S & K, they stated they were awaken by their downstairs neighbour at approx 23:30 hours by the downstairs neighbour playing loud music. They also stated they banged on common door which connects

their apartments to get him to stop the music. While banging on the door a lower door panel was accidentally broken. Took full responsibility and will have the connecting door fixed. (Police) explained to both parties the issue was a tenant dispute which needs to be resolved by either moving out or learning to be better neighbours. No evidence of a criminal act." The other states: "This file is a neighbour dispute. Both parties need to come to an understanding in regards to quiet times as the suites were not designed for soundproof activities. There is no evidence of mischief and or threats."

Another email from the tenants in the upper suite offers to assist the landlord in evicting the tenant and gives advice on how to do so, with the landlord asking for such advice in return emails.

The tenant testified that the rental unit is a basement suite and is an illegal suite. During the tenancy, the tenants upstairs deliberately disturbed the tenant by pounding on the floors. During the month of November, 2011 the tenant spoke to the tenants upstairs tactfully, but the disturbances did not stop, and the tenants were spiteful. The tenant tried to be neighbourly, however upon returning home from a Christmas vacation the tenant discovered that a ceramic pot in the yard belonging to the tenant had been smashed, and no one even bothered to clean it up. The tenant contacted the landlord and provided photographs of the damaged pot. The tenant's quiet enjoyment was disrupted time after time and the tenant does not know who damaged the pot, however, the tenant testified that the tenants in the upper suite have been discriminatory since the tenant moved into the rental unit.

The tenant further testified to being in regular contact with the landlord by email. The landlord responded to the tenant that the disturbances were normal noises for a basement suite.

The tenants upstairs had placed a radio on their side of the common door causing further disturbances for the tenant. The tenant made recordings of it and sent them to the landlord. The tenant further testified that the landlord would not act, and the tenant had to argue with the landlord to give the other tenants a warning letter. Then on May 8, 2012 the landlord served the tenant with a one month notice to end tenancy for cause instead of the tenants in the upper suite.

The tenant also testified that problems started from the outset of the tenancy. The landlord's evidence shows that the house was the home of the tenants upstairs, and the tenant in the lower suite was not considered an equal tenant. The tenant was being terrorized and the tenants upstairs knew they could get away with it. The tenant

contacted a by-law officer who recorded the noise, and the tenants upstairs confessed it was deliberate.

The tenant also testified that the landlord offered to replace the insulation between the suites, but that would further inconvenience the tenant and wouldn't solve the problems. The landlord did not answer the tenant's concerns; the landlord evicted the tenant and did not deal with the tenant's complaints. The tenant feels that the landlord took sides because the other tenants pay the higher rent.

Analysis

Firstly, with respect to the landlord's claim, the tenant testified to vacating the rental unit on June 10, 2012, not June 12, 2012, and the landlord has provided a pro-rated calculation of utilities owed to June 12, 2012. I have added the utility bills provided by the landlord, which were not disputed by the tenant, and I find that the tenant owes the landlord $363.05. However, I am not satisfied that the landlord's calculations with respect to pro-rating utilities for periods that have not yet been billed. I accept that the tenant owes utilities to the end of the tenancy, however, the landlord provided no explanation for the difference in the water/sewer/waste bill being higher in the later period than the previous period. The difference between the previous billing period and the newest billing period is $74.70. I find that the tenant owes that utility for 71 days of the tenancy. I have also reviewed the hydro bill and find that the meter reading information shows consumption for the previous billing period as the same for the newer billing period, but the bill is higher because it appears that the rate increased. I have calculated the 10 days of the tenancy at the rate which appears to have been imposed by BC Hydro on April 1, 2012. I have completed similar calculations with respect to the Fortis Gas utilities. The calculations are as follows:

Calculations:

Water: Using the lower amount of $398.59 for a quarterly bill commencing with April 1, 2012 for 71 days of tenancy: 398.59 / 91 days in the period = 4.38; 4.38 X 71 days of tenancy = 310.98 X .25 = 77.74

Hydro: Using the increased amount from April 1 to May 1: 4.67 + 46.78 + 227.75 + 13.96 = 293.16 + (Regional transit levy: April 1 to May 1: 32 days @ .0624/day = 2.00) + HST on those amounts (295.16 x .12 = 35.41). 295.16 + 35.41 = 330.57 / 31 = 10.66 per day X 40 days of tenancy = 426.40 X .25 = 106.60

Fortis: Using the latest bill, $183.47 for 33 days = 5.56 per day X 40 days of tenancy = 222.40 X .25 = 55.60.

It's clear in the evidence before me that the landlord served the tenant with a notice to end tenancy which is dated May 8, 2012. If the tenant had provided the landlord with notice to end the tenancy, the notice by the tenant would not take effect until the end of June, 2012. Therefore, I find that the tenant is liable for rent for the month of June, 2012 in the amount of $1,100.00.

I have read the 67 pages of emails exchanged between the parties provided by the landlord. The emails are not in chronological order, which would have been a preferable method of providing such a large evidence package, however the emails refer to a number of complaints written by the tenant and by the tenants in the upper suite, along with responses by the landlord. I also note that in one string of emails the landlord refers to a 10 Day Notice to End Tenancy, which was not mentioned by either party during the hearing. The string of emails indicates that the landlord had spoken to the tenant after the issuance of that notice, and the tenant promised to stop all complaints in return to simply living in the rental unit, and that if the tenant failed to live up to those promises, another 10 Day Notice would be issued, and the landlord could either withdraw the 10 Day Notice already issued and if the tenant broke that promise a new 10 Day Notice could be issued, or the landlord could leave the first one in place in case the tenant broke that promise. I find that there is no legal truth in the landlord's email.

With respect to the landlord's assertion that the tenant didn't provide any evidence of disturbances to the landlord during the tenancy, and therefore the landlord could not act on the tenant's complaints, I find that the landlord has misinterpreted a landlord's responsibilities. It's not clear in the evidence before me what exactly the landlord expected as evidence that the tenant's right to quiet enjoyment was affected. The tenant provided numerous emails, called a by-law enforcement officer and police on more than one occasion for the same complaint that went on for months. I also note that there are no emails provided that may have been exchanged prior to February 2, 2012, although the tenant testified to being in regular contact with the landlord by email prior. The tenant testified that the problems started at the outset of the tenancy and that the tenant spoke to the tenants in the upper suite in November, 2011 and contacted the landlord. I accept that the tenant was and still is offended that the landlord ultimately took the side of the tenants in the upper suite.

However, in order to be successful in a claim for such damages, the onus is on the claiming party to show that reasonable efforts were made to reduce or prevent the amounts claimed. In this case, I find that the tenant made numerous complaints to the landlord about disturbances caused by the tenants in the upper suite. I further find that the tenant was not satisfied at any time by any actions made or not made by the

landlord to resolve the dispute between the tenants and as a result retaliated by disturbing the tenants in the upper suite. Further, the landlord offered to install insulation between the suites to reduce noise levels, being an attempt to resolve the problem which was denied by the tenant. I further find that the landlord attempted to resolve the issues by providing rugs to the tenants in the upper suite.

In considering the tenant's application for a monetary order for loss of quiet enjoyment, I find it necessary to evaluate the emails to determine at what point the tenant failed to mitigate. The evidence shows that the tenants in the upper suite complained to the landlord in mid-February. I use that as a date that the tenant failed to mitigate, and I find that the tenant is entitled to monetary damages for the months of November, December, and January. I further find that 100% of rent paid as claimed by the tenant is excessive; the tenant resided in the rental unit and has not established that disturbances existed for 100% of the time. In determining quantum, I find that the tenant has established a monetary claim for 25% of rent paid for those months, for a total of $825.00.

In summary, I find that the tenant owes the landlord for past utilities the sum of $363.05, further utilities to the end of the tenancy the sum of $239.94; and $1,100.00 in unpaid rent. I find that the landlord owes the tenant $825.00 for loss of quiet enjoyment, $100.00 for a utility deposit and $550.00 for the security deposit. I find it reasonable to set off the amounts from each other and find that the tenant owes the landlord the difference in the amount of $227.99.

Since both parties have been partially successful with the applications before me, I decline to order that either party recover the filing fees from the other.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The tenant's application for an order cancelling a notice to end tenancy is hereby dismissed.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $227.99.

This order is final and binding on the parties and may be enforced.

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: June 18, 2012.

Residential Tenancy Branch