



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNDC, MNSD, RR FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of possession for unpaid rent, compensation for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a 10 Day Notice issued for unpaid rent; compensation for damage or loss under the Act, an order the landlord complete repairs and that the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

In early December the landlord applied for dispute resolution via the Direct Request Proceeding process. Later that day the landlord was informed that the tenant had disputed the eviction Notice; the landlord then went to the Residential Tenancy Branch office, altered his original application, which was then scheduled for this participatory hearing. The application was not formally amended, as the tenant had not yet been served with Notice of the original application.

The landlord's application was reviewed several times; in order to establish the nature of the claim. The landlord had not applied requesting compensation for damage to the rental unit. The only items indicated on his application were a claim for unpaid rent, loss of rent revenue, a claim against the security deposit and recovery of the filing fee.

The tenant and landlord confirmed that the tenancy ended by written mutual agreement, effective December 31, 2012. The landlord no longer required an Order of possession.

The tenant did not amend the portion of her application, which disputed the Notice.

The tenant's application was reviewed at the start of the hearing in order to establish the details of the claim. The tenant had applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and orders the landlord make repairs. As the tenant has vacated the unit there was no need to pursue cancellation of the Notice or repairs.

The tenant requested compensation in the sum of \$500.00 as a result of a loss of sleep, loss of internet service for more than 2 months and loss of cable services. The tenant requested rent reduction for the loss of the services. No detailed calculation of the claim was supplied indicating the amounts claimed for each loss outlined by the tenant.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,540.00 for unpaid December, 2012 rent and loss of January 2013 rent revenue?

May the landlord retain the \$385.00 security deposit paid by the tenant?

Is the tenant entitled to compensation for damage or loss in the sum of \$500.00, which would include rent abatement?

Is the landlord entitled to filing fee costs?

Background and Evidence

A copy of the signed tenancy agreement supplied as evidence indicated that the 6 month fixed-term tenancy commenced on October 1, 2012; rent was \$770.00 per month, due on the first day of each month. A deposit in the sum of \$385.00 was paid.

The tenant rented a small unit in the upper portion of the landlord's word-frame home.

The tenancy was to include cable and WI-FI internet services.

The parties signed a mutual agreement ending tenancy effective December 31, 2012, a copy of the agreement was submitted as evidence.

The tenant agreed that she moved out of the unit in the early hours of January 1, 2013.

The landlord did not have another occupant ready to take possession of the unit on January 1, 2013; however he has claimed the loss of January 2013 rent revenue in the sum of \$770.00

The landlord had originally claimed compensation for unpaid December 2012 rent; both parties agreed that rent was paid on December 14, 2012.

The tenant described a number of deficiencies with the unit, resulting in a loss of quiet enjoyment, including:

- No cable service for the 1st weeks;
- No WI-FI service throughout the tenancy;
- The sounds of children in the landlord's unit, which caused repeated disturbance to the tenant;
- A broken kitchen cabinet door above the fridge that was not fixed; and
- 2 burnt-out halogen light bulbs in the kitchen fixture.

On one occasion the landlord started completing some renovations at 4 a.m. which caused the tenant to wake up from her sleep; this did not occur again.

The tenant said that she repeatedly asked the landlord to fix the light bulbs, the door and that her requests for peace and quiet were ignored. The landlord babysits their grandchildren, who were noisy and disturbed the peace the tenant expected. The landlord refused to allow the tenant to make some small wall repairs to the home, which left her feeling the home was not really hers to use.

The tenant did not place any of her concerns in writing. There was email communication as early as October 10, 2012 in relation to other matters, but no emails were submitted which indicated the tenant had expressed concerns to the landlord.

The landlord said the tenant was told they would have young children in the home. The landlord offered to replace the light bulbs but the tenant said she did not care if he replaced them. The cabinet door was repaired eventually.

When the landlord became aware that the tenant did not have cable service he bought some parts and had Shaw come to the home. The tenant had an older analog TV which would not work with the digital service. The problem was resolved within 2 weeks.

The landlord said that the tenant had told him she did not own a computer, that she used a computer at her place of work. The tenant did not dispute this submission other than to say that the Wi-Fi in her unit did not work and that she was so frustrated she had not pursued the use of the Wi-Fi until toward the end of the tenancy.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the landlord's monetary claim, he confirmed December 2012 rent has been paid; therefore I find that portion of the application is dismissed.

When the landlord and tenant signed a mutual agreement ending the tenancy the landlord could not then expect the tenant to be responsible for any loss of future rent revenue. By remaining in the rental unit until the early hours of January 1, 2013, the tenant did over-hold in the unit beyond the time the Act determines a tenancy should end; 1 p.m. However, as the landlord did not have someone else ready to move into the unit I find that he did not suffer a monetary loss. The tenant did not remain in the home during the day of January 1, 2013; therefore, I find that compensation for 1 day over-holding is unnecessary.

Therefore, as the parties mutually agreed to end the tenancy, I find that the landlord's claim for the loss of January 2013 rent revenue is dismissed.

In relation to the tenant's claim for loss of services, I find that the tenant failed to provide evidence that she mitigated the loss she has now claimed by providing proof of attempts to rectify the deficiencies she outlined or by submitting a claim earlier in the tenancy requesting orders. I find a delay in providing cable services could well have been due to the tenant's older TV. The tenant showed no evidence that she had attempted to access the W-Fi at an early stage of the tenancy. There was no evidence before me that the tenant pursued the need for light bulbs in the kitchen.

Therefore, I find that the tenant has failed to show that she mitigated the claim she has made or that she has suffered a loss equivalent to \$500.00 and that the application is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. As the landlord has applied to retain the deposit and his application has been dismissed I Order the landlord to return the deposit in the sum of \$385.00, to the tenant.

Based on these determinations I grant the tenant a monetary Order in the sum of \$385.00. In the event that the landlord does not comply with this Order, it may be

served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant's application is dismissed.

The tenant is entitled to return of the \$385.00 deposit; a monetary Order has been issued.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 17, 2013

Residential Tenancy Branch

