



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act; an Order the landlord make repairs to the unit; that the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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 included evidence and testimony provided.

Preliminary Matters

The tenant submitted photographs which were not given to the landlord; therefore, that evidence was set aside and not considered.

On January 22, 2013 the tenant submitted evidence of a copy of a 1 Month Notice to End Tenancy for Cause that was issued on January 15, 2013. The tenant did not amend his application made on January 4, 2013 to include consideration of this Notice and did not indicate that he had intended to amend his application or that he wished to do so. I explained that the tenant could reference the Notice as evidence but that I would not be considering the merits of the Notice.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$3,600.00 for the loss of value of the tenancy?

Must the landlord be Ordered to make repairs to the rental unit?

Is the tenant entitled to compensation claimed, as a rent reduction?

Background and Evidence

The tenancy commenced on June 8, 2012. Rent is \$975.00 per month, due on the first day of each month. The unit is 672 sq. feet in size, in the lower unit of a house.

The current property manager assumed responsibility for the unit in October, 2012.

A copy of the tenancy agreement supplied as evidence indicated that the rent included gas and electricity.

The tenant's details of the dispute portion of the application listed a number of deficiencies in the unit:

- Excessive noise;
- Noisy refridgerator;
- Loss of laundry facility;
- Problems with toilet;
- Broken garage door;
- Laundry lint covers the floors;
- Poor lighting, problem with living room fixture;
- Buckling laminate;
- Clogged bathroom sink; and
- Lack of heat.

The tenant has claimed compensation in the sum of \$600.00 per month from July to December 2012.

On October 3, 2012 the tenant wrote a letter to the landlord's previous agent complaining about the broken washer/dryer, the noise of the upstairs occupants and the noisy refridgerator. A copy of the letter was supplied as evidence.

On December 10, 2012 the tenant wrote the current property management company, indicating that he would file a complaint via dispute resolution unless the noise and laundry issues were dealt with in a timely manner. On January 2, 2013 the tenant again wrote the landlord and provided a list of deficiencies, including those detailed in the tenant's application. Copies of both letters were supplied as evidence.

The tenant lives below a family who have young children who begin running around the upper unit at 6 a.m. The tenant said that the noise has been constant and that the landlord has done nothing to encourage the occupants to cease making an unreasonable amount of noise. The tenant supplied copies of several letters from friends who attested to the sounds of children causing unnecessary noise between 6 a.m. and 8:30 p.m.

On October 29, 2012 the upstairs occupant sent the landlord an email indicating she believed the noise issue had been reduced since a rug had been placed on the floor. There was a November 2012 email before me indicating the occupants living in the upper unit had purchased a rug for one of the floors, in an attempt to reduce the transfer of sound.

On December 13, 2012 the landlord sent the upper occupants an email indicating that the units did not have sound-dampening that might be expected in apartment buildings. The landlord had been to the unit on the day prior and talked to the tenant about some issues and had told him he would need to move if the noise continued, as an area rug had been placed on the floor in an attempt to minimize the sound transfer.

The refrigerator functions but runs constantly and makes loud grinding sounds. The tenant wants the fridge repaired or replaced.

At the start of the tenancy, the property manager at the time said the combination washer/dryer would be repaired. The tenant has not had a working laundry since he moved into the unit. The tenancy agreement does not include a clause that indicates laundry will be provided, but the tenant was led to believe the machines were for his use. The lack of laundry facilities has resulted in the tenant having to use a Laundromat.

The landlord made a number of attempts to arrange repair of the existing units, but eventually determined that parts cannot be located. The tenant acknowledged that the landlord has just delivered a new washer and dryer that should be installed for his use by February 1, 2013.

The tenant said his toilet does not flush properly; he has to flush it several times before it works fully. The landlord provided a copy of an invoice dated December 1, 201 issued by a plumber who made repairs to the tenants' toilet.

The tenant said that the garage door was not working properly; the landlord supplied a copy of a May 2012 invoice indicating that the garage door had been aligned and programmed.

The tenant is worried about the living room ceiling fixture; it flickers when turned on. The tenant agreed that on February 1, 2013 when the electrician is in the unit to install the washer and dryer, he will have the electrician look at the fixture and the outlets, to establish if any repairs are needed. The landlord agreed the inspection should occur.

Some laminate in the hallway is loose; the tenant has stubbed his toe on the laminate.

The bathroom sink has not drained properly since the start of the tenancy; the tenant first reported the problem to the landlord on January 2, 2013.

The unit is heated by forced air but also has a gas-fired fireplace. The heat is controlled by the occupants in the upper unit. At times the occupants turn the heat off. The tenant agreed that he can use the fireplace but that sometimes the unit gets too hot.

The tenant said that his unit becomes dusty very easily and that it appears dryer lint is somehow entering the unit.

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.

Residential Tenancy Branch policy suggests that an arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenant.

Section 28 of the Act provides that all tenants have the right to be free from unreasonable disturbance. The tenant has made several written submissions to the landlord requesting the issue of noise be investigated and as early as October 29 2012, the landlord was aware of the attempt to mitigate the sounds, by the purchase of a rug. The tenant made a written complaint again on December 10, 2012 and the landlord met with the tenant on December 13, 2012, to discuss tenancy issues.

It is not uncommon for sounds to transfer between upper and lower units, particularly in what I suspect is a wood frame building. Children cannot be expected to cease playing during day-time hours. There was no evidence before me that the children are playing outside of normal waking hours. I find that the landlord did take steps to minimize sound transfers by placing an area rug in the upper unit; however, it is unreasonable to expect that the sounds from the children would be eliminated.

I have considered the balance of the tenant's right to quiet enjoyment against the right of the occupants upstairs to allow their children to play. I have also considered the landlord's responsibility to respond to complaints of noise and the need to do whatever reasonably possible, to mitigate the disturbances. I find that the landlord did address the problem by ensuring a rug was purchased and that the tenant is being disturbed by the normal sounds of day-to-day living. Therefore, I dismiss the tenant's claim for compensation.

The toilet and garage door have both been repaired; this was supported by the invoices supplied by the landlord. As the tenant reports that the toilet does not flush properly I

Order the landlord, within a reasonable period of time, to inspect the toilet again in order to assess the need for further repair. There was no evidence before me that the tenant has suffered a loss of use in relation to the garage door and toilet.

The refrigerator is reported to be making loud grinding sounds, the bathroom sink is reported to drain very slowly and the flooring may be lifting. Therefore, I Order the landlord to inspect the fridge, sink and flooring, within a reasonable period of time, to establish the need for any repair that might be required in relation to possible safety concerns and housing standards. The tenant has not been denied the use of a working fridge or sink; therefore, I find he has not suffered any loss requiring compensation. There was no evidence before me that the flooring has resulted in a loss to the tenant.

I find that the tenant had a reasonable expectation laundry services would be provided; the combination washer/dryer was in the home for the tenant's exclusive use. On October 3, December 10, 2012 and January 2, 2013 the tenant had written the property manager requesting the laundry be repaired. The landlord has confirmed that attempts were made to arrange repair of the existing machine and that new machines are being installed in the unit; which leads me to accept the tenant's submission that laundry was intended to be a term of this tenancy.

Therefore, I find that the tenant did lose the use of laundry services that were meant to be a facility provided as part of the tenancy. The tenant did not supply any verification of the sums he said he had spent on laundry; therefore, I find that he is entitled to nominal compensation in the sum of \$20.00 per month from June 2012 to January 2013, inclusive, totalling \$160.00. This amount may be deducted from any rent owed by the tenant. A monetary Order has also been issued and will be adjusted in value should compensation be obtained through rent reduction. If rent reduction is chosen the parties should place that agreement in writing.

The landlord agreed that the living room fixture and electrical outlets are to be inspected by an electrician and I Order that these inspections take place within a reasonable period of time. If any deficiencies are found, I Order required repairs to be completed within a reasonable period of time.

As the tenant reported that he can use the gas fireplace, which heats his home to the point where it can be too hot, I find he has not suffered a loss of heat and, therefore, that he is not entitled to compensation. The tenant has not incurred additional costs, as he does not pay for the gas utility.

In relation to the reports of dryer lint entering the unit, I find that the landlord should inspect the dryer vents to ensure that they are properly maintained, clear of debris and functioning.

Based on these determinations I grant the tenant a monetary Order in the sum of \$160.00 for the loss of laundry services. 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.

The tenant may deduct \$160.00 from rent owed, at which point the monetary Order will not be of any force.

The balance of the tenant's claim is dismissed.

Conclusion

The tenant is entitled to compensation for loss of laundry facilities in the sum of \$160.00.

The balance of the tenant's claim is dismissed.

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: February 01, 2013

Residential Tenancy Branch

