Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes

OPC, MND, CNC, MNDC, MNSD, ERP, AS, RR, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord seeking an order of possession based on a One-Month Notice to End Tenancy for Cause, and a monetary order for damages.

The hearing was also convened to deal with an Application by the tenant for an order to cancel the One-Month Notice to End Tenancy for Cause, an order for a rent abatement for loss of value to the tenancy, an order to refund the tenant's security deposit and pet damage deposit, an order permitting the tenant to assign or sublet the rental unit and an order to force the landlord to complete repairs to the rental unit.

Both parties were present at the hearings on May 13, 2013 and June 12, 2013. At the start of the hearings I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

The parties testified that since the landlord's and tenant's applications for dispute resolution were made, on April 16, 2013 and April 19, 2013, the tenancy had ended. The parties confirmed that the tenant moved out of the rental unit on May 11th or 12, 2013. The tenant stated that they were forced out by the landlord and prevented from returning, prior to their case being heard.

Preliminary Matter

On May 13, 2013, a *Preliminary Matter* was raised by the lanldord regarding the evidence from the tenant for the tenant's cross application.

At the outset of the hearing, the landlord stated that, although the tenant had made a cross application on April 19, 2013, the tenant's application and hearing package was only received by the landlord just prior to the hearing. The landlord had submitted a

photocopy of the envelope he received from the tenant. The Canada Post tracking number on the hearing package received by the landlord from the tenant, verified that the tenant had not mailed the package until May 8, 2013. The landlord was seeking an adjournment on this basis.

Rule 3 of the Residential Tenancy Rules of Procedure provides that, together with a copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of the notice of dispute resolution proceeding letter provided by the Residential Tenancy Branch, the dispute resolution proceeding information package provided by the Residential Tenancy Branch, the details of any monetary claim being made, and any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

Section 59 of the Act states that an application for dispute resolution must be in the approved form, include full particulars of the dispute that are the subject of the dispute resolution proceedings. A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the arbitrator. (my emphasis)

In this instance, I found that the tenant failed to serve the tenant's cross application to the landlord within the 3-day deadline specified under the Act.

In regard to whether or not the tenant's late evidence should be considered, I found that Rule 4 of the Residential Tenancy rules of Procedure states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding except when the date of scheduled for the dispute resolution proceeding is too soon to allow the five (5) day requirement in a) to be met.

If copies of the evidence are not served on the respondent or the applicant as required, and if the evidence is relevant, the arbitrator must decide whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice. I therefore found that the other party must be given an opportunity to review the unseen evidence before the application can be heard and this would necessitate an adjournment.

Given the above, I found that the tenant had not served their application, including the evidence supporting their application and the evidence defending against the landlord's

application, in accordance with the Act and the Rules of Procedure. I therefore, determined that the landlord's request for an adjournment must be granted.

In granting the request for the adjournment, I found that the portion of the landlord's application seeking and Order of Possession had been rendered moot a by the fact that the tenant had already moved out. Therefore this issue no longer needed to be heard or decided.

I also found that the portion of the tenant's application relating to the tenant's requests for an order to cancel the One Month Notice to End Tenancy for Cause, an order to permit the tenant to assign or sublet the rental unit and an order to force the landlord to complete repairs to the rental unit were no longer at issue. Therefore, the reconvened hearing would only deal with the monetary claims from each party.

The hearing was reconvened on June 12, 2013.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to the return of the security deposit paid?
- Is the tenant is entitled to monetary compensation?

Issues to be Decided for the Landlord's Application.

- Is the landlord entitled to monetary compensation for rent and damages?

Background and Evidence

The tenancy began September 1, 2012 and ended May 11, 2013. The monthly rent was $500.00. A security deposit of $250.00 and a pet damage deposit of $250.00 were paid. No move-in or move-out condition inspection reports were completed

Submitted into evidence were copies of communications, a copy of the tenancy agreement, photos submitted by each party, estimates, receipts and a copy of a One Month Notice to End Tenancy for Cause dated March 31, 2013. The landlord submitted two affidavits from witnesses.

Background and Evidence: Tenant's Application

The tenant testified that the landlord failed to make repairs to the roof after water infusion was reported to the landlord in October 2012, and the tenant was forced to endure conditions that they felt were in breach of the agreement between the parties. The tenant submitted photos of water-stained ceilings and walls. The

tenant is claiming a rent abatement for the leaky roof in the amount of $500.00 for the total duration of the tenancy.

The tenant testified that the landlord neglected to repair deficient areas in the rental unit including covering electrical outlets, a hole in the ceiling where an exhaust fan was supposed to be installed, unrepaired gaps in the infrastructure and ill-fitting doors.

The tenant testified that the landlord subjected the tenant to a campaign of harassment which devalued the tenancy during their occupancy in the unit. The tenant stated that the landlord also attempted to change the tenancy terms verbally after the agreement was in place and refused to permit the tenant and their dogs access to their portion of the yard on the property.

The tenant's photos showed the exterior grounds that the tenant alleged were supposed to be included as part of the tenancy for their use. The tenant testified that they put up a temporary fence and gate to safely enclose their dogs, which was a term in the tenancy agreement. The tenant testified that their fence was forcibly removed by the landlord, damaging the side of the house. The tenant is seeking a further rent abatement for loss of use and quiet enjoyment of the rental unit and yard.

The tenant testified that the landlord also attempted to terminate their tenancy in a manner that contravened the Act by issuing a letter dated March 31, 2013 threatening them with, "*an immediate eviction notice*", that would take effect the following day A copy of this communication was in evidence.

The tenant testified that they later received a formal One Month Notice to End Tenancy for Cause and initially filed to dispute the Notice, but then decided to move out instead.

The tenant vacated the rental unit on May 11, 2013. The tenant testified that, before they were completely finished cleaning the unit and the yard, the landlord suddenly took physical possession of the unit and ordered them to stay away from the premises. The tenant testified that the landlord took this action without an Order of Possession and a legal writ allowing them to do so. The tenant testified that the landlord would not permit them to enter to clean up the property nor to retrieve their pets, which were removed without the tenant's permission. The tenant testified that the police were called.

The total amount of damages being claimed by the tenant is $3,000.00.

In regard to the tenant's claim relating to the leaking roof, the landlord stated that the roof damage was not reported by the tenant until the end of December 2012

and was repaired as quickly as possible. The landlord testified that the roof was fully rectified by the start of February 2013. The written witness statements supported the landlord's testimony.

With respect to the tenant's allegation that the landlord failed to make necessary repairs, the landlord testified that the tenant was responsible for causing most of the damage being alleged and had never reported some of the alleged deficiencies to the landlord.

In regard to the tenant fencing off a portion of the yard, the landlord testified that the tenant was never promised access to the portion of the yard they decided to use, nor were they given permission to erect a fence in the front. The landlord testified that the tenant was only given permission to fence off a dog run in a specific location. The landlord testified that the tenant constructed the dog yard in a common area which blocked a fire exit to the restaurant adjacent to the property.

The landlord testified that the One Month Notice to End Tenancy for Cause, issued to the tenant, required that they were to vacate the unit on April 30, 2013. However, the tenant over-held beyond that date and, according to the landlord, refused to vacate until mid May 2013. The landlord acknowledged that they did order the tenants off the property and had called the police when the tenants persisted in trying to access the property.

The landlord's position is that no rent abatement or monetary compensation should be granted to the tenants because the roof was fixed, the tenants wrongfully fenced off an area to which they were not entitled and the tenant's allegations of disrepair and harassment had no merit.

Background and Evidence Landlord's Application

The landlord's application indicates that the landlord is claiming compensation in the amount of $3,000.00 from the tenant. The landlord did not provide a clear breakdown of the above claim in the application, but provided verbal testimony about the amounts being sought for rent and damages.

No move-in and move-out condition inspection reports were completed by the landlord and tenant.

The landlord is seeking $1,081.82 for replacement of the carpet, which the landlord claims was ruined beyond repair by the tenant's dogs. The landlord provided an estimate and an invoice for the charges.

The landlord is seeking reimbursement of $101.00 for purchase of an entry door that was damaged and poorly-patched by the tenant and $34.98 to replace a deadbolt removed by the tenant. The landlord provided photos and receipts for the purchases.

In addition, the landlord is claiming $80.00 for cleaning up the yard and provided photos of items allegedly left in the yard by the tenant.

The landlord is also claiming $115.00 to reconnect the hydro service, which the landlord stated was disconnected because the tenant failed to pay the utility account.

The landlord testified that other damage found in the unit included broken screens, smashed windows, a damaged bedroom door and damage to the washer.

The landlord testified that, although the tenant did not vacate by the effective date of the Notice and remained past April 30, 2013, no rent was paid by the tenant for their occupancy during the month of May. The landlord is claiming $500.00 rent for May, 2013.

The tenant disputed the landlord's claim for the damaged entry door, stating that the door was already in bad shape when they arrived. The tenant testified that the deadbolt did not function properly and they had to adjust it for security reasons. The tenant testified that the carpet was already stained when they moved in as well.

With respect to the garbage left on the premises, the tenant explained that they tried to do a thorough clean-up but, because they were denied access to do the final clean-up and repairs when the landlord ordered them off the property, they were not able to finish up.

In regard to the hydro reconnection fee, the tenant's position is that this cost must be borne by the landlord. The tenant testified that they had the account disconnected because they no longer resided on the property. The tenant stated that the landlord is responsible for any reconnection fee because the landlord was opening their own hydro account in the landlord's name and this had nothing to do with the tenant.

In regard to the landlord's claim for the rent for May, 2013, the tenant stated that they tried to pay but the landlord was not available to accept the rent. The tenant pointed out that they were not permitted to remain on the property after May 11, 2013 and therefore should not be responsible to pay rent for the entire month of May 2013.

Analysis

Analysis: Tenant's Claim for Return of Security Deposit

I find that the tenant's security deposit was $250.00 and the pet damage deposit was $250.00 and these funds are held in trust for the tenant. The deposits always function as a credit for the tenant and the landlord must returned the deposits within 15 days of the end of the tenancy and the date that the tenant's forwarding address is provided or make an application to keep the deposit for money owed or damages incurred.

In this instance, both the landlord and the tenant filed for dispute resolution and both had lodged monetary claims before the tenancy had even ended.

I find that the tenant's security and pet damage deposits remain held in trust. This $500.00 belonging to the tenant will be taken into account as a credit to the tenant in calculating the monetary compensation that may be awarded to either party.

Analysis:Tenant's Monetary Claim

With respect to a monetary claim for damages or rent abatement, it is important that the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that section 32 of the Act imposes responsibility on both the landlord and tenant in terms of caring for the property. The Act states that a landlord must provide and maintain residential property in a state of decoration and repair that would comply with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, to make it suitable for occupation by a tenant.

Opinions may differ as to what constitutes a “necessary” repair. Some deficiencies in a unit may not significantly affect the function or usefulness of a feature or facility, particularly if the deficiency was present at the time that the tenant agreed to rent the unit. However, there is an expectation that a roof on a structure be sound and watertight. A leak in the roof is considered to be a serious matter in a tenancy that must be addressed without delay.

I accept the tenant’s testimony that the roof was likely leaking from the start of their tenancy. I find that the photos appear to show stains on the ceiling that would indicate water infusion. I further find that, regardless of when the problem was allegedly reported, the landlord should have been aware of the condition of the roof through regular inspections of the rental property, as part of the landlord's duties under the Act.

With respect to the tenant’s allegation that compensation is warranted, I find that a leaking roof that is not immediately repaired would constitute both violation of the Act and of the tenancy contract and adversely affects the value of the tenancy. I find that compensation to the tenant is warranted for being subjected to a leaking roof.

In determining the extent and duration of the roof leak, in order to set the amount of the compensation, I find that the evidence put forth by these two parties clashes. The tenant is claiming that some of the leaking continued to the end of the tenancy and the landlord claimed that the roof was repaired at the earliest opportunity near the first part of the month of February 2013. However, the landlord did not submit any evidence verifying that all of the roof repairs were fully completed in February 2013.

Accordingly, I find that the tenant is entitled to monetary compensation in the form of a retro-active rent abatement in the amount of $500.00 for the reduced value of the tenancy.

In regard to the tenant’s claim for an additional rent abatement due to loss of quiet enjoyment and being required to make their own repairs to the rental unit, I find that, during the tenancy there were issues that interfered with the tenant’s use and occupation of their space including the poor condition of the rental premises, the landlord’s actions in forcibly removing the tenant’s fence, the landlord’s issuing of a noncompliant notice threatening to immediately terminate the tenancy and the landlord’s violation of the Act by forbidding the tenant to access the property after May 11, 2013 without first obtaining an Order of Possession and an enforceable writ from B.C. Supreme Court. For these

transgressions, I find that the tenant is entitled to further monetary compensation of $150.00.

I find that the tenant is entitled to total credit or compensation in the amount of $1,150.00 comprised of $250.00 for the security deposit, $250.00 for the pet damage deposit, $500.00 rent abatement for the leaking roof and $150.00 for loss of quiet enjoyment and illegal eviction.

Analysis – Landlord's Application

Although the landlord has requested monetary compensation in the amount of $3,000.00 I find that no detailed breakdown was provided as required under the Act. However, I find that the landlord was able, through verbal testimony, to outline their monetary claims totaling $1,912.80.

Rent

In regard to the claim for rent owed for the month of May 2013, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. However, I find that the landlord issued a One Month Notice to End Tenancy for Cause that terminated the tenancy as of April 30, 2013. Accordingly, I find that the landlord is entitled to be compensated for the 11-day occupancy during which the tenant was in possession after the effective date of the termination in the pro-rated amount of $180.82.

Damages

With regard to the landlord's claim for repairs to the unit, I find that in order to meet elements 1 and 2 in the test for damages the landlord must prove that there was damage and it was caused through a violation of the Act by this tenant.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, unit must be left reasonably clean, and undamaged except for reasonable wear and tear.

In determining whether or not the tenant had complied with section 37 of the Act, I find that this can best be established through a comparison of the unit's condition when the tenancy began, with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must

sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report were ever completed. I find that the absence of a move-in condition inspection report, makes it impossible to determine what condition the unit was in when the tenant took occupancy on September 1, 2012 to compare with the move-out condition.

I find the landlord's failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish that the end-of-tenancy condition sufficiently proves that the damage was caused during the tenancy by this tenant and did not pre-exist the current tenancy.

While I accept that there were repairs and cleanup to do after the tenant had vacated, I find that, by prohibiting the tenant from accessing the unit after May 11, 2013, the landlord created a situation where the tenant could not possibly have complied with their responsibilities under section 37 of the Act, which was to make sure that the unit was left reasonably cleaned and in good repair.

Given the above I find that the landlord's claim for compensation for the repairs was not sufficiently supported by the evidence and the landlord has not met the burden of proof and must be dismissed.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of $180.82 for rent owed for a portion of May 2013.

I find that the total compensation owed to the tenant is $1,150.00, comprised of $500.00 for the security and pet damage deposit refund, $500.00 rent abatement for the leaking roof and $150.00 compensation for loss of quiet enjoyment.

In setting off these two amounts, I find that the outstanding monetary compensation owed to the tenant is $969.18.

I hereby grant the tenant a monetary order in the amount of $969.18. This order must be served on the Respondent and may be filed in the Provincial Court, (Small Claims), and enforced as an order of that Court.

The remainder of the landlord's and the tenant's applications are dismissed without leave. Neither party is entitled to be reimbursed the filing costs.

Conclusion

Both the landlord and the tenant are partly successful in their applications and both are entitled to monetary compensation for a portion of their claims. After setting off the

amounts, the tenant is issued with a Monetary Order. The landlord's request for an Order of Possession is found to be moot as the tenancy ended.

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 12, 2013

Residential Tenancy Branch