Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNSD, MNDC, MNR, OLC, RP, PSF, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, which was filed by the Tenant on May 16, 2013. The Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for a monetary Order for the cost of emergency repairs; for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* or the tenancy agreement; for the return of her security deposit, for an Order requiring the Landlord to comply with the *Act*; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant applied to amend the Application for Dispute Resolution to reflect the correct spelling of the Landlord's first name, as provided by the Landlord at the hearing. The Landlord did not object to the amendment and the Application for Dispute Resolution was amended accordingly. I incorrectly recorded the spelling of the Landlord's first name on my interim decision of June 13, 2013. The correct spelling is reflected in this final decision.

Preliminary issues regarding service of evidence are addressed in my interim decision. Those issues and background information outlined in the interim decision remain relevant to this decision.

The application to set aside a Notice to End Tenancy for Unpaid Rent; to retain the security deposit; for a monetary Order for the cost of emergency repairs; for an Order requiring the Landlord to comply with the *Act*; for an Order requiring the Landlord to make repairs to the rental unit; and for an Order requiring the Landlord to provide services or facilities required by law were addressed in my Interim Decision of June 13, 2013.

The Tenant's application for a monetary Order for money owed or compensation for damage or loss was the only issue not yet determined when the hearing was

reconvened on July 23, 2013. There was insufficient time to conclude the reconvened hearing on July 23, 2013 so that hearing was adjourned. The hearing was reconvened on September 09, 2013 and was concluded on that date.

Both parties were represented at all hearings. They were given the opportunity to provide relevant testimony, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The remaining issue to be determined is whether the Tenant is entitled to compensation for making repairs to the rental unit and for living with deficiencies with the rental unit.

Preliminary Matter

At the outset of the hearing on July 23, 2013 the Tenant stated that she disagreed with the decision rendered in my interim decision regarding rent owing for May and June of 2013. She stated that the telephone conversations recorded on the USB stick show that she did actually agree to move out at the end of June.

I have listened to these recordings again and I find that they do not cause me to alter my original finding. The recordings confirm the undisputed evidence that the male Property Manager told the Tenant she would not have to pay rent for May and June of 2013. They do not contradict the undisputed evidence that the Tenant did not agree to move out at the end of June.

My decision that the offer of free rent for May and June was contingent on the Tenant agreeing to move out of the rental unit at the end of June stands. This decision was based on the testimony presented at the hearing, the text messages exchanged between the parties, in particular the one dated May 09, 2013, and the taped telephone conversations.

Background and Evidence

The male Property Manager stated that a condition inspection report was not completed at the start of the tenancy. The Tenant stated that the parties met at a local restaurant on October 06, 2012 at which time they completed a condition inspection report by memory, a copy of which was not supplied to her.

The Tenant is seeking compensation, in the amount of $1,460.00, for removing ice from the roof. She stated that she first reported the problem with ice to the male Property Manager in early or mid-November of 2012; that they met in person on several occasions, at which time they discussed her concerns about ice accumulating on the

roof; that the issue was never reported in writing until February 10, 2013; that the issue was never reported by text message; that the male Property Manager told her it was a maintenance issue that was the Tenant's responsibility; and that she hired a relative to clear ice from the roof on several occasions.

The male Property Manager stated that the Tenant never informed him there was a need to clear ice from the roof until the Landlord was served with the Application for Dispute Resolution documents.

The Tenant submitted a letter, dated February 10, 2013, in which she mentions that water is leaking into the rental unit due to lack of insulation in the attic, rotten sheeting, ruined shingles, and 2 feet of ice building up on the roof. She stated that she posted this letter on the Property Manager's door on February 10, 2013.

The male Property Manager stated that he did not find the letter dated February 10, 2013 posted on his door and that he did not see this letter until the Landlord was served with the Application for Dispute Resolution documents.

The Tenant is seeking compensation, in the amount of $1,548.00, for purchasing water during the tenancy. The Tenant stated that the well on the property is contaminated. In support of this allegation she stated that she removed a dead mouse from the well and she was told by a representative of the City of Prince George that the well was contaminated. The Tenant submitted no expert evidence to corroborate her claim that the well is contaminated or that the water is not potable.

The Tenant submitted photographs of the top of the well which show loose insulation around the well opening, rust in the metal wall of the wall, and wood in the well, which she contends is rotting wood. Upon closer inspection of the photographs, I find it entirely possible that the "wood" in the well is actually a ladder, presumably for servicing the well. The Tenant stated that she began using bottled water after she found the dead mouse, which she believes was three weeks after the start of the tenancy.

The male Property Manager stated that he is not aware that the well water is contaminated, although he was aware that there is a high concentration of iron in the water. He stated that he did tell the Tenant to add salt to the well for general maintenance, but not because the well was contaminated.

The Tenant stated that she reported her concerns with the well to the male Property Manager after she found the dead mouse; that the problem was verbally reported and that her concern was reported via text message and in writing on February 10, 2013.

The male Property Manager stated that the Tenant never informed him the well water was not potable until the Landlord was served with the Application for Dispute Resolution documents and that he never received the letter that was allegedly posted on February 10, 2013.

The Landlord and the Tenant agree that the tenancy agreement they signed indicated that water was included in the rent and that there is a notation beside it that says “if applicable”. The Tenant stated that this notation was added in the event there was a problem with the well. The male Property Manager stated that this notation was added, at the request of the Tenant, in case the well ran dry.

The Tenant submitted a text message, dated May 08, 2013, in which she declared that the “water softener needs repaired immediately because it is not drinkable as you know and we have to buy and carry water….”.

The Tenant submitted a text message, dated November 04, 2012, in which she is clearly negotiating a purchase price. In the text she declared that “not a lot of people want to ship in water when they live in city limits cuz well is so bad…”. The male Property Manager stated that he believed this was a reference to the high iron content in the water, not because the water was not potable.

The male Property Manager stated that they had the well water tested after the hearing on July 23, 2012 and the test results indicate the water is potable. The results were not submitted as evidence.

The Tenant is seeking compensation, in the amount of $215.00, for cleaning the rental unit. The Tenant stated that she spent approximately 10.5 hours cleaning the upper portion of the rental unit. The Tenant submitted several photographs of the upper level of the rental unit which show that it was in need of cleaning at the start of the tenancy.

The male Property Manager does not dispute that the upper portion of the rental unit required cleaning at the start of the tenancy; he stated that it was not cleaned because the parties were negotiating an agreement to purchase the rental unit; and that the Tenant understood the upper unit was not in good condition.

The Tenant is seeking compensation, in the amount of $85.00, for repairing a hole in the exterior landing. The Tenant stated that she verbally reported the hole to the Landlord; she does not believe she mentioned the hole by text message; she repaired this hole, at the direction of the male Property Manager, by nailing a piece of plywood and a piece of rubber over the hole; and that it took approximately one hour to repair the hole.

The male Property Manager stated that he did not ask the Tenant to repair the hole and that he did not know about the hole until the Landlord was served with the Application for Dispute Resolution documents.

The Tenant is seeking compensation, in the amount of $1,168.50, for being without a functional dishwasher for the duration of the tenancy. The Landlord and the Tenant agree that a dishwasher was to be provided with the rental unit.

Tenant stated that the dishwasher was not working at the start of the tenancy; that the Property Manager told her it would be repaired; that she verbally requested a repair on several occasions after the tenancy started; and that it was never repaired.

The male Property Manager stated that he believed the dishwasher worked at the start of the tenancy and that the Landlord was never informed of a problem with the dishwasher until the Landlord was served with the Application for Dispute Resolution documents.

The Tenant is seeking compensation, in the amount of $45.00, for garbage disposal. The Tenant stated that she spent approximately four hours taking a variety of garbage to the dump, some of which was personal, some of which was property left at the rental unit prior to the start of the tenancy, and some of which was from repairing the rental unit. The Tenant stated that the driveway had caved in, which prevented them from driving up to the house. She stated that because of the state of the driveway they could not use the city garbage disposal as they could not bring the garbage down the long driveway to the road. The Tenant submitted photographs of the damage to the driveway.

The male Property Manager agreed that there were holes in the driveway, however he stated that he was able to drive to the house when he served the Notice to End Tenancy on May 09, 2013. The Landlord submitted a photograph of a truck in front of the rental unit on May 09, 2013, which he contends shows that the Tenant could drive to the house.

The Tenant stated that the truck in the photograph was not insured. After the male Property Manager noted that the insurance sticker indicates that the vehicle was insured until July 29, 2013, the Tenant stated that the insurance had been paid by monthly installments; several payments had been missed; and she therefore assumed the insurance was invalid.

The male Property Manager noted that if the Tenant was able to bring the garbage to the road for the purposes of transporting it to a commercial disposal site, given that they allegedly could not drive their vehicle to the rental unit, they could have simply left it at the road for the city disposal.

The Tenant is seeking compensation, in the amount of $41.24, for pain medication. She stated that on May 09, 2013 she was walking on the front stairs on the exterior of the house when one side broke away from the landing, causing her to fall. She stated that she sought medical assistance and that she reported the incident to the Property Manager, via text message. She stated the stairs were repaired a few weeks after this incident. The Tenant submitted receipts for medication purchased on May 09, 2013, in the amount of $41.24.

The male Property Manager stated that he did receive a text message on May 09, 2013 from the Tenant informing him that she had fallen; that he viewed the stairs later on that

date and confirmed they were broken; and that he was not aware of a problem with the stairs prior to this incident. The male Property manager stated that the stairs were repaired on May 23, 2013.

The Tenant is seeking a rent refund, in the amount of $4,887.50. The Tenant argues that she is entitled to a rent refund due to a variety of deficiencies with the upper portion of the rental unit.

The Landlord and the Tenant agree that the Tenant has paid rent of $6,420.00 for the duration of the tenancy and that there were a variety of deficiencies with the rental unit. In addition to the aforementioned deficiencies, the parties agree that the roof leaked and needed replacing and that there was a variety of structural damage caused by moisture and general aging. The parties agree that the Tenant was aware of some of the deficiencies prior to the start of the tenancy and that the original intent was that the Tenant would repair some of those deficiencies, given that she would be purchasing the property.

The male Property Manager argued that the rent was established on the current condition of the rental unit and that the lower portion of the residence was recently renovated and fully usable. He stated that it was his understanding that the Tenant would live in the lower portion of the residence until the upper portion was renovated. He stated that the Landlord did not wish to rent the rental unit and the only reason the Landlord entered into this tenancy agreement was that the Landlord believed the Tenant was going to purchase the property.

The Tenant stated that her son lived in the lower portion of the residence and that she lived in the upper portion of the residence for the majority of the tenancy.

The Tenant is seeking compensation for the loss of quiet enjoyment of the rental unit, in the amount of $3,000.00. This claim relates, in part, to living with all of the aforementioned deficiencies and to the Landlord's failure to repair those deficiencies in a timely manner. It also relates to the Landlord's failure to repair a variety of deficiencies in the rental unit which for which the Tenant has not sought compensation, the most significant of which was the rear door/wall.

The Landlord and the Tenant agree that shortly after the tenancy began they entered into an agreement for the Tenant to repair a rear door and the floor beside that door, for a rent reduction of $500.00; that after the repairs were started it was determined that there was significant structural damage to the wall surrounding the door; that the floor was repaired; and that the wall/door was never repaired.

The claim for loss of quiet enjoyment also relates to the inconvenience of having people working for the Landlord come to the rental unit without notice. The Tenant stated that this was a particular inconvenience for her as she had dogs that she needed to contain when people came to the property. The Tenant was unable to specify when contractors came to the rental unit without proper notice.

The Tenant stated that on May 16, 2013 a realtor came to the rental unit and knocked on the door; that she did not answer the door; that she heard the realtor enter the lower portion of the rental unit; that she does not know what he did in the rental unit; that she phoned the realtor's office and had them ask him to leave; and that he did leave after approximately 20 minutes. She acknowledged that she had made arrangements to meet with this realtor on May 16, 2013 but she cancelled that appointment prior to his arrival.

The male Property Manager stated that he has spoken with the realtor, who denied accessing the rental unit on May 16, 2013. He stated that this realtor was meeting with the Tenant to assess the property; that he was not yet acting on behalf of the Landlord on this date and that he did not have keys to the rental unit.

Although this realtor was available to be a witness on a previous hearing date, he was not available when this matter was discussed on September 09, 2013.

The claim for loss of quiet enjoyment also relates to the stress related to the Tenant not understanding whether she was a tenant or a purchaser. The male Property Manager stated that throughout the protracted negotiations he behaved professionally and respectfully.

Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement. I therefore find that both parties were obligated to comply with the *Act*.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. As the Tenant is seeking financial compensation, the burden of proving that she is entitled to financial compensation rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that she informed the Landlord that ice needed to be removed from the roof of the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that she verbally reported the problem to the Landlord on many occasions or that refutes the male Property Manager's testimony that the problem was not reported prior the Landlord being served with the Application for Dispute Resolution documents.

In reaching this conclusion I have placed no weight on the letter that was allegedly posted on the Landlord's door on February 10, 2013, as the Landlord did not acknowledge receiving that letter and there is no evidence to refute that testimony. Although the Tenant alleges it was posted, it is entirely possible that both parties are being truthful and that the letter was removed by an unknown third party.

In determining this matter I have placed some weight on the undisputed testimony that the Tenant did not report the problem with the ice via text messaging. As these parties communicated regularly and frequently by text message, I find that the absence of a message regarding the ice lends credibility to the male Property Manager's testimony that the problem was not reported until the Landlord was served with the Application for Dispute Resolution documents.

As the Tenant has failed to establish that the Landlord was informed of the need to remove ice from the roof, I find that the Tenant is not entitled to compensation for removing the ice. There can be no expectation for a landlord to remedy a problem if the problem is not reported to the landlord.

I find that a landlord is obligated to provide potable water to a tenant, pursuant to section 32(1) of the *Act*. I find that the Tenant has submitted insufficient evidence to establish that the water in this rental unit was not potable. In reaching this conclusion I was heavily influenced by the absence of expert evidence that corroborates this suspicion.

In reaching this conclusion I note that I have no expertise with wells and I cannot conclude that the water was contaminated on the basis of the photographs submitted in evidence. I believe, however, that there are grounds to be concerned about the safety of the well on the basis of those photographs and I would have ordered the Landlord to have the well/water inspected if this tenancy had continued. I find, however, that the photographs are not enough to establish that the water was not potable.

Although the text message the Tenant sent on November 04, 2012 confirms that the Tenant believes that there is a problem with the well, it does not refute the Landlord's testimony that the only problem with the well that he was aware of was that the water had a high iron content.

Although the text message the Tenant sent on May 08, 2013 further confirms that the Tenant believes that there is a problem with the water, it does not help to establish her claim that the well was contaminated. Rather, it suggests that the water is not potable because there is a problem with the water softener. It seems illogical to me that a Tenant would want a water softener repaired/maintained if the well water itself was contaminated.

I find that the notation on the tenancy agreement regarding water being provided by the Landlord "if applicable" does not help to determine whether the well water was potable, as there is no indication that either party believed the water was not potable when the agreement was signed.

As the Tenant has failed to establish that the well water was not potable, I dismiss the claim for compensation for bottled water.

Section 32(1) of the *Act* requires a landlord to provide a tenant with residential property that is in a state of decoration and repair that makes it suitable for occupation by a tenant, having regard to the age, character, and location of the rental unit. In my view, this includes providing a rental unit that is reasonably clean at the start of the tenancy.

On the basis of the undisputed evidence and the photographs submitted in evidence, I find that the Landlord failed to comply with section 32(1) of the *Act* when the Landlord failed to provide the Tenant with a reasonably clean rental unit at the start of the tenancy. I therefore find that the Tenant is entitled to compensation for the 10.5 hours she spent cleaning the rental unit at the start of the tenancy, at an hourly rate of $20.00 per hour, which equates to $210.00.

I find that the Tenant has submitted insufficient evidence to show that she informed the Landlord that there was a hole in the landing until she served notice of this dispute resolution proceeding. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that she verbally reported the problem to the Landlord and was told to repair the hole or that refutes the male Property Manager's testimony that the problem was not reported prior the Landlord being served with the Application for Dispute Resolution documents.

In determining this matter I have placed some weight on the undisputed testimony that the Tenant did not report the hole in the landing via text messaging. As these parties communicated regularly and frequently by text message, I find that the absence of a message regarding the hole lends credibility to the male Property Manager's testimony that the problem was not reported until the Landlord was served with the Application for Dispute Resolution documents.

I find that the Tenant has submitted insufficient evidence to show that she informed the Landlord that the dishwasher was not functional prior to serving notice of this dispute resolution proceeding. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that the Landlord knew the dishwasher did not work at the start of the tenancy or that refutes the male Property Manager's testimony that the problem was not reported prior the Landlord being served with the Application for Dispute Resolution documents.

In determining this matter I have placed some weight on the undisputed testimony that the Tenant did not discuss the problem with the dishwasher by text message. As these parties communicated regularly and frequently by text message, including several texts about delivering new kitchen appliances, I find that the absence of a message regarding the dishwasher lends credibility to the male Property Manager's testimony that the problem was not reported until the Landlord was served with the Application for Dispute Resolution documents.

As the Tenant has failed to establish that the Landlord was informed of the need to repair the dishwasher, I find that the Tenant is not entitled to compensation for being without a dishwasher.

I find that the Tenant has submitted insufficient evidence to show that the damage to the driveway prevented them from driving up to the rental unit. In reaching this conclusion I was influenced, in part, by the testimony of the male Property Manager, who stated that he was able to drive up to the house. I was further influenced by the photographs of the driveway, which in my view show that the driveway is passable, although it is clearly in need of repair.

Even if the driveway was not passable, I find the Tenant's position that she had to use a commercial disposal site, rather than the service provided by the city, to be illogical. If she was able to bring the garbage to the road for the purposes of transporting it in a vehicle, it obviously could have simply been left at the road to be picked up by the city. I therefore dismiss the Tenant's claim for garbage disposal.

On the basis of the testimony of the Tenant, I find that she injured herself when the front stairs broke. In reaching this conclusion, I was heavily influenced by the test message she sent to the Landlord on May 09, 2013, which corroborates this testimony.

I find that the Landlord failed to comply with section 32(1) of the *Act*, which required the Landlord to maintain the front stairs in a safe and functional condition. As the Tenant's injury was the direct result of the Landlord failing to maintain the rental unit, I find that she is entitled to compensation for the cost of the medication she purchased as a result of this injury, in the amount of $41.24.

In reaching this conclusion I note that the Landlord is obligated to compensate the Tenant for her loss even though he may not have been aware the stairs were a hazard. While there can be no expectation for a landlord to repair a deficiency until it is reported, that does not absolve a landlord from ensuring the property is safe and from paying compensation to a tenant who suffers a loss as a result of improper maintenance.

I find that both parties entered into this tenancy agreement with the hopes that they would enter into an agreement to sell/purchase the home. I find that the Tenant understood that the upper portion of the rental unit was not in good repair when she moved into the rental unit and that she intended to make repairs to the rental unit, at her own expense, given that she intended to purchase the unit. In my view, the rent was established on this basis and the Tenant is not entitled to a rent refund. In reaching this conclusion I was influenced, to some degree, by the undisputed evidence the lower portion of the rental unit was in good condition and that the Tenant stated that she periodically lived in the upper portion of the rental unit, in spite of the deficiencies.

Once the Tenant elected not to purchase the rental unit, I find that the agreed upon rent may not have reflected the value of the rental unit, given that the Tenant would not be making repairs to the rental unit. In this case, I find that the Tenant had the right to end the tenancy, which would have mitigated any potential loss. For these reasons, I dismiss the Tenant's claim for a rent refund.

While many of the Tenant's claim for compensation have been dismissed because she failed to establish that the Landlord had been informed of a need for repair, there is no dispute that there was a delay in repairing some deficiencies, such as the driveway, which was reported to the Landlord and the roof repair, which was promised at the start of the tenancy. There is also no dispute that the wall surrounding the rear door has never been repaired.

When considered in its entirety, I find that the failure to maintain the property did interfere with the Tenant's quiet enjoyment of the rental unit. In particular, I find that the failure to repair the roof and structural damage associated to the leaking roof was a significant inconvenience. Although the driveway was passable, in my opinion, it was clearly another inconvenience. I award the Tenant a total of $1,000.00 in compensation for all the inconveniences related to the failure to make repairs in a timely manner.

I find that the Tenant has submitted insufficient evidence to show that contractors coming to the rental unit breached her right to the quiet enjoyment of the rental unit. In reaching this conclusion I was influenced by the Landlord's right and obligation to maintain the rental unit and by the absence of details of how frequently contractors came to the rental property without prior notice to the Tenant. I therefore decline to award any compensation related to contractors coming to the property.

I find that the Tenant has submitted insufficient evidence to show that a realtor entered the rental unit with the authority of the Landlord on May 16, 2013. In reaching this conclusion I was heavily influenced by the undisputed evidence that the realtor went to the rental unit as he had an appointment to meet with the Tenant; that the realtor did not yet have keys to the rental unit; and that at that point was not yet acting as a realtor for the Landlord. Even if I accepted that this realtor accessed the rental unit on May 16, 2013, there is no evidence that he did so under the direction or with the authority of the Landlord. I therefore cannot conclude that the Landlord is responsible for the realtor's actions on that date and I decline to award any compensation related to this incident.

While there is no doubt that these parties entered into a lengthy negotiation regarding the purchase of this property, it is clear from the text messages submitted in evidence that both parties wished to reach an agreement and that both parties willingly entered into these negotiations. On the basis of those emails I cannot conclude that the Landlord acted inappropriately and/or unduly delayed the negotiations. Although I accept the protracted negotiations were confusing and unsettling for the Tenant, I find that she could have resolved that conflict at any time by simply withdrawing from the negotiations. I therefore decline to award any compensation for any loss of quiet enjoyment of the rental unit as a result of the negotiations.

Conclusion

The Tenant has established a monetary claim of $1,251.24. Pursuant to 72(2) of the *Act*, I order that this amount be applied to the rental arrears of $2,080.00. This will fully

satisfy the monetary claim of $1,251.24 and leave rental arrears of $828.76.

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: September 10, 2013

Residential Tenancy Branch