Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, DRI, and O

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; to dispute an additional rent increase; and "other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant stated that he served the Landlord with the Application for Dispute Resolution, the Notice of Hearing, and documents he wishes to rely upon as evidence, via registered mail, on June 21, 2013. The Landlord acknowledged receipt of the Tenant's documents and they were accepted as evidence for these proceedings.

The Tenant stated that he served the Landlord with additional documents he wishes to rely upon as evidence, via registered mail, on July 16, 2013. The male Landlord stated that they received notification that they had registered mail but they elected not to pick up the mail that had been sent. I find that the documents were served to the Landlord in accordance with section 88 of the *Residential Tenancy Act (Act)* and they were accepted as evidence for these proceedings. The Landlord cannot avoid service by electing not to pick up items that are served by mail.

The female Landlord stated that the Landlord sent documents the Landlord wishes to rely upon as evidence to the Tenant, via regular mail, on July 19, 2013. The Tenant stated that he has not yet received those documents. Section 90 of the *Act* stipulates that a document that is mailed is deemed to be received on the fifth day after it is posted. I therefore find that these documents would be deemed received by the Tenant on July 24, 2013.

In these circumstances the Tenant stated he has not yet received the documents that were mailed on July 19, 2013 and I have no reason to discount that testimony. In any event, the documents were not served in accordance with the time lines established by

the rules of procedure even if they had been received by the Tenant on July 24, 2013, and I refuse the accept the documents as evidence.

Issue(s) to be Decided

Has there been a rent increase that does not comply with the *Residential Tenancy Act (Act);* is the Tenant entitled to a refund for heating oil; and is the Tenant entitled to compensation for costs associated to moving into or out of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that they communicated, via email, regarding this tenancy; that the Tenant moved into the rental unit on July 04, 2012; and that they did not meet, in person, prior to the Tenant moving into the rental unit.

The Landlord and the Tenant agree that in February of 2011 the Landlord advised the Tenant that he could rent the rental unit for cost of the property taxes; that the Tenant would be obligated to pay for the cost of heating oil; and that the Tenant would be obligated for the cost of internet services. The Tenant submitted a copy of this email communication.

The female Tenant stated that when the aforementioned email was written she did not know the precise amount of the taxes. She stated that the annual taxes are $1,745.00. The Tenant stated that the Landlord verbally advised him that taxes were “about” $1,500.00.

The Landlord and the Tenant agree that they had no further discussions about the amount of rent prior to the Tenant moving into the rental unit. The female Landlord stated that on July 09, 2012 she informed the Tenant that the monthly rent would be $320.00 per month and that the Tenant signed a hand-written tenancy agreement agreeing to this amount. The female Landlord was permitted to read the hand-written agreement into evidence but was advised that I would not be referring to the copy that she submitted to the Residential Tenancy Branch.

The Tenant stated that on July 09, 2012 the Landlord informed him that the monthly rent would be $320.00 per month but he did not sign an agreement regarding this amount. He stated that he paid the rent of $320.00 because he did not believe he had any other alternative, given that he did not have alternate accommodations.

The Landlord and the Tenant agree that the Tenant paid $320.00 per month for the period between July 04, 2012 and January 31, 2013. The Tenant is seeking a rent refund on the basis that the Landlord did not have the right to increase the rent to $320.00.

The Landlord and the Tenant agree that the Tenant was obligated to pay for the heating oil used during the tenancy. The Tenant is seeking compensation, in the amount of $887.67, for the oil he left in the tank when he vacated the rental unit.

The Tenant stated that when he moved into the rental unit the tank was almost empty. He stated that he did not measure the amount of oil in the tank when he moved into the rental unit but when the driver delivered the heating oil he informed him that the tank was almost empty and cautioned him to not let the tank run dry.

The female Landlord stated that she believes the tank was approximately ¼ full at the start of the tenancy; that they do not let the tank run dry because it is bad for the furnace; and that the comment the driver made regarding not allowing the tank to run dry is simply a caution that would typically be given to someone who is not familiar with oil furnaces.

The Tenant submitted receipts to show that on September 26, 2012 he received an oil delivery, for which he was charged $1,415.76, and that on December 07, 2012 he received a second oil delivery, for which he was charged $483.83. The receipts show that 1061.1 litres of heating oil was delivered on September 26, 2012.

The Tenant stated that prior to vacating the rental unit he measured the tank and determined there were 28.5 inches of oil remaining in the tank. He submitted a chart from the oil company to show that this measurement indicates there are 657.8 litres in the tank. He also submitted a letter from the oil company, dated June 17, 2013, which indicates the current price of bio heat is $1.179 plus taxes.

The Tenant is seeking compensation, in the amount of $3,625.00, for property he left in Ontario before moving to this rental unit. The Tenant contends that he should be compensated for the property he left in Ontario because the Landlord was pressuring him to move into the unit quickly. The female Landlord stated that they were not pressuring him to move into the rental unit.

The Tenant stated that he moved out of the rental unit on January 31, 2013. The Tenant stated that on December 31, 2012 the Landlord sent him a letter in which he declared that the Tenant should “smarten up or pack your shit”. He stated that he responded to this email on January 31, 2013, in which he wrote “I took your advice”. The Tenant contends that this email served to inform the Landlord that he had vacated the rental unit. The Tenant insists that he sent this email on January 31, 2013 although the email, which was submitted in evidence, shows that it was sent on February 01, 2013. The Tenant stated that he did not give the Landlord any other notice of his intent to vacate the unit.

The female Landlord stated that they did not realize the rental unit had been vacated until February 05, 2013 or February 06, 2013, when they went to the rental unit.

The Tenant is seeking compensation, in the amount of $1,424.91, for moving costs and $4,680.00, for the cost of renting alternate accommodations. He contends that he was forced to move out of the rental unit because the Landlord threatened him. He contends that the email the Landlord sent on December 31, 2012, in which the Landlord informed him to "smarten up or pack your shit" was a threat to evict him. A copy of this email was submitted in evidence.

The Tenant also submitted a copy of an email from the male Landlord, dated February 01, 2013, in which the Landlord wrote: "We are still on vacation We will return Tuesday and deal with you accordingly". He contends that this email is also threatening which contributed to his decision to move out of the rental unit.

The Tenant submitted a significant amount of documentary evidence that was not relevant to the issues in dispute at these proceedings and that evidence was, therefore, not considered. This evidence relates to deficiencies with the rental unit however the Tenant has not made a claim for compensation for loss of quiet enjoyment of the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a verbal tenancy agreement sometime prior to July 04, 2012. Although it is clear they had limited discussion about the details of the rent that would be paid, the only discussion they had regarding rent prior to this date was that the Tenant would have to pay the property taxes. I therefore find that their verbal agreement required the Tenant to pay the property taxes in exchange for the right to occupy the rental unit.

Neither party submitted evidence to establish the property taxes for this property. Although I accept the Tenant's testimony that he was told the taxes would be "about" $1,500.00, I find that this was not a definitive statement and that the amount of the taxes were not determined prior to the start of the tenancy. I therefore find that the Tenant was obligated to pay the amount of the property taxes that are actually due, rather than the estimated amount of $1,500.00. In the absence of evidence to the contrary, I accept the female Landlord's testimony that the property taxes were $1,745.00, which equates to monthly rent of $145.42.

As the Tenant occupied the rental unit for 7 months, I find that he should have paid $1,017.94 in rent. As the undisputed evidence is that he actually paid $2,240.00 in rent, I find that he is entitled to a rent refund of $1,222.06.

Even if I accepted the Landlord's testimony that on July 09, 2012 the Tenant agreed, in writing, to pay monthly rent of $320.00, I would conclude that this agreement constitutes a rent increase. Given that the parties had reached a general agreement regarding rent for the rental unit prior to the start of the tenancy, the Landlord simply does not have the right to alter the agreement after the Tenant moves into the unit. I therefore find that the Landlord was not entitled to collect monthly rent of $320.00.

I find that the Tenant has failed to establish the amount of heating oil in the tank at the start of this tenancy. In reaching this conclusion I was heavily influenced by the Tenant's testimony that he did not measure the tank at the start of the tenancy.

On the basis of the undisputed evidence, I find that 1061.1 litres of oil was delivered on September 26, 2012, which is 93.5% of a standard 1136 litre tank. Given that the oil was delivered almost 3 months after the start of the tenancy, this does not establish that the tank was only 6.5% full at the start of the tenancy, given that some oil could have been used during the first 3 months of the tenancy.

On the basis of the testimony of the female Landlord, who estimated that the tank was 25% full at the start of the tenancy, I find that the tank was no more than 25% full at the start of the tenancy. I therefore find that the Tenant was obligated to leave the tank 25% full at the end of the tenancy. 25% of a standard 1136 litre tank is 284 litres.

On the basis of the testimony of the Tenant, I accept that the Tenant measured the tank at the end of the tenancy and that there was 657.8 litres of oil left in the tank. In reaching this conclusion I note that the Landlord submitted no evidence to contradict this testimony. As the Tenant was obligated to leave 284 litres of oil in the tank at the end of the tenancy, I find that he is entitled to a refund for the additional 373.8 litres he left in the tank. At the rate of $1.179 per litre, I find that the Tenant is entitled to compensation of $440.71 for oil. I note that this award does not include taxes as I do not have sufficient information to determine the taxes due on heating oil.

I find that the Tenant is not entitled to compensation for personal property he left in Ontario. Even if the Tenant felt pressured to move quickly in order to secure these living accommodations, I find that that was a personal decision he made and that the Landlord is not obligated to compensate him for any losses he experienced as a result of that decision. Section 67 of the *Act* authorizes me to award compensation to a tenant for losses incurred as a result of the Landlord breaching the *Act* or the tenancy agreement. As there is no evidence to suggest that the decision to leave property in Ontario was the result of the Landlord breaching the *Act* or their tenancy agreement, I dismiss the Tenant's claim for $3,625.00.

I find that the Tenant has submitted insufficient evidence to show that he was forced to vacate the rental unit on January 31, 2013 because of threats made by the Landlord. In reaching this conclusion I placed no weight on the email that was submitted in evidence, dated February 01, 2013, in which the male Landlord informed him that he would "deal with" him accordingly. The evidence shows that this email was sent after the Tenant had vacated the rental unit and I cannot, therefore, conclude that the email contributed to the Tenant's decision to vacate the rental unit.

I find that the email dated December 31, 2012, in which the Landlord informed the Tenant that he should "smarten up or pack your shit" was not grounds for the Tenant to vacate the rental unit without providing proper notice to end the tenancy. While the

email clearly conveys frustration on the part of the Landlord, it does not in any way compel the Tenant to vacate the rental unit. It could be interpreted as merely a suggestion for the Tenant to end the tenancy if the Tenant cannot alter his behaviour or it could be interpreted as a warning that the Landlord may attempt to end the tenancy if the Tenant does not alter his behaviour.

In the event the Tenant did elect to end the tenancy, this email did not absolve him of his obligation to provide proper written notice of his intent to vacate. In the event the Landlord elected to end the tenancy, this email did not absolve him of his obligation to provide the Tenant with proper written notice to end the tenancy, in which case the Tenant would have the right to either dispute the notice or vacate the rental unit.

As the Tenant has failed to establish that he was forced to vacate the rental unit as a result of threats made by the Landlord, I find that he is not entitled to any costs associated to his decision to vacate the rental unit.

Conclusion

The Tenant has established a monetary claim of $1,662.77 and I grant a monetary Order for that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: July 25, 2013

Residential Tenancy Branch