



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, OLC, PSF, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order requiring the landlord to comply with the Act, and an order requiring the landlord to provide services or facilities required by law.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlord said that he did not receive any documents from "you people," presumably meaning the Residential Tenancy Branch ("RTB"); later the landlord confirmed receipt of the hearing documents. The landlord denied receiving the tenant's photographic evidence; however, due to the contradictions by the landlord, I did not accept his statements, and allowed the tenant's photographic evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The tenant said that she has now vacated the rental unit and therefore it was no longer necessary to seek orders for the landlord. As a result, the hearing proceeded on the tenant's request for monetary compensation.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The tenant provided undisputed evidence that this tenancy began on August 1, 2012, that she vacated the rental unit on July 31, 2013, total monthly rent was \$1425, and that she paid a security deposit of \$712.50 at the beginning of the tenancy.

The tenant explained that her rent for the residential home is \$1200 and that she pays an additional \$225 per month for the use of the 9 horse paddocks.

The tenant's relevant documentary evidence included photographs of the state of the rental unit and horse paddocks and an explanation of her monetary claim.

The tenant listed her monetary claim as follows:

No use of the main floor bathroom, 11 months @ \$250/mth	\$2750
No use of the balcony 10.5 months @ \$150/mth	\$1650
Extra hydro usage, dripping hot water, 10.5 months @ \$25/mth	\$275
Inadequate paddock fencing, loss of use, 9 months @ \$35/mth	\$315
Total	\$4990

I note that the tenant's calculation for these claims does not match the actual calculation.

In support of and in response to the tenant's application, the parties provided the following submissions:

No use of the main floor bathroom-

The tenant submitted that from the first day of the tenancy to the last day, she had no use of the main floor bathroom, as there was no tap/faucet in the bathtub or sink, and due to the toilet being loose. The tenant explained that there were only two bathrooms in the rental unit, and that for the duration of the tenancy, she and her family had use of only one bathroom.

The tenant said that after many requests, the landlord's son finally attended the rental unit to bolt down the toilet. The tenant further submitted that the new bathroom sink was still in the front yard.

The tenant referred to her photographic evidence, showing the condition of the bathroom and the lack of a tap in the bathtub.

In response, the landlord submitted that when the tenant began to complain, he had his "man" go over, and that he pulled out a handful of long hair out of the sink. The landlord contended this was the reason the sink being clogged and that the tenant failed to cooperate in being available for a plumber to attend to replace the sink.

The tenant denied that she prevented the plumber from attending and that as she and her family have short hair, they would not have caused the drain to clog.

No use of the balcony-

The tenant submitted that there was so much rotting wood on the wooden deck/balcony, she was unable to use the deck at all for safety reasons. The tenant submitted the ground below the deck was visible as there was so much rotting wood; the tenant also stated that the landlord's son-in-law, who worked on the rental unit, said he could not believe how much the landlord had allowed the rental unit to deteriorate, according to the tenant.

The tenant referred to her photographic evidence, showing the condition of the deck.

In response the landlord said he had the deck pressure washed and that all the wood was safe and useable.

Extra hydro usage-

The tenant claimed that she is entitled to compensation due to obvious extra hydro usage, as there was a heavy dripping leak in the hot water line throughout the tenancy, so much so that she had to keep the door closed so that the house would not feel like a sauna and so that it would not create mould.

In response, the landlord denied that there was a leak, as he attended the rental unit the morning of the hearing and found no leak. The landlord also said that he had his man go over to the rental unit.

Inadequate paddock fencing-

The tenant submitted that although she had use of all 7 paddocks to start with, she gradually lost use until she ultimately had use of only 4 of the paddocks. The tenant agreed that she accepted the paddocks “as is,” but that her agreement was for not for no paddocks. In explanation, the tenant said that there was a time when the fencing fell completely over and lay across the driveway, requiring the tenant to pay someone to have it removed.

In response, the landlord submitted that the tenant had a bad horse, and that her horses caused the paddocks to break.

Analysis

Under section 32 of the Act, a landlord must repair and maintain a rental unit so that it complies with health, safety, and building standards required by law and is suitable for occupation by a tenant given the age, character and location of the rental unit. A tenant is also responsible for maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access.

It is important to note that major repair issues, extermination problems and other issues with the rental unit may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

I am satisfied through the testimony and photos provided by the tenant that there were substantial issues with the state of the rental unit, which caused the tenancy to be devalued.

No use of the main floor bathroom-

In the case before me, I am satisfied that the landlord was aware of a problem with the lack of a tap in the bathtub and sink, as demonstrated by the tenant’s contradicted evidence and I therefore accept that throughout the 12 month tenancy, the tenant had the use of only one bathroom, instead of two, as bargained for. I find the landlord offered no credible reason why he did not have the main floor bathroom repaired so that

the bath/shower facility worked, or that he could have had the sink replaced, instead of leaving the uninstalled sink in the yard.

Due to the landlord's complete failure to repair the main floor bathroom, giving the tenant and her family use of only one bathroom, I find the tenant's request for compensation for devaluation of the tenancy and loss of use of \$250 per month to be reasonable.

I therefore find that the tenant is entitled to a monetary award of \$3000 (\$250 per month, August 1, 2012 through July 31, 2013).

No use of the balcony-

I likewise am convinced by the tenant's photographic that the deck/balcony was not usable and I am further convinced that the landlord was aware of the issue and failed to make any repairs.

The landlord did not dispute that he was aware of the tenant's request for repairs, and I therefore find the tenant's request for a devaluation of the tenancy and loss of use of the balcony/deck in the amount of \$150 per month to be reasonable.

I therefore find the tenant is entitled to a monetary award in the amount of \$1800 (\$150 per month, August 1, 2012 through July 31, 2013).

Extra hydro usage-

In reviewing the tenant's photographic evidence, I find the tenant demonstrated that there were leaking pipes in the rental unit; I also find that the landlord failed to respond to this issue and did not show that he had the leak repaired.

I find that tenant was unable to demonstrate that she is entitled to compensation for extra hydro usage of \$25 per month, but considering the landlord's lack of response, I find a reasonable amount to be \$10 per month.

I therefore find the tenant is entitled to a monetary award in the amount of \$120 (\$10 per month, August 1, 2012 through July 31, 2013).

Inadequate paddock fencing-

I am less convinced that the tenant is entitled to compensation for inadequate paddock fencing. The parties agreed that the tenant accepted the fencing in an “as is” state, and I have no evidence of the state of the fencing at the beginning of the tenancy or that the landlord was responsible for the further deterioration of the fencing.

I therefore dismiss the tenant’s claim for compensation for inadequate paddock fencing, without leave to reapply.

Tenant’s security deposit-

At the time of the hearing, this issue was premature for consideration as the tenancy had just concluded and a security deposit is an issue to be dealt with at the end of a tenancy in accordance with section 38 of the Act.

I remind both parties that each have certain rights and obligations regarding the tenant’s security deposit, pursuant to section 38, and I invite both parties to review said rights and obligations.

The tenant provided her forwarding address at the hearing, as it is listed on the title page, and the tenant is at liberty to make another application for dispute resolution seeking a return of her security deposit in the event the landlord fail to comply with section 38 of the Act.

Due to the above, I find the tenant has proven that she is entitled to a total monetary award in the amount of \$4920, comprised of \$3000 for loss of use of the main floor bathroom, \$1800 for loss of use of the balcony/deck, and \$120 for increase hydro for a leaking pipe.

Conclusion

The tenant’s application for monetary compensation is granted in part.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$4920, which I have enclosed with the tenant’s Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: August 16, 2013

Residential Tenancy Branch

