



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacGregor Realty and Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The Landlord and the Tenant agree that the security deposit was the subject of a previous dispute resolution proceeding and that at the conclusion of those proceedings the Landlord was given authorization to retain the security deposit. As the issue of the security deposit has been previously determined, I dismiss the Tenant's application to recover the security deposit.

At the start of the hearing the Tenant stated that in addition to the return of the security deposit she is also seeking a rent reduction of \$200.00 per month for the duration of the tenancy. As it was not entirely clear that the Tenant was making this application in the documents that were served to the Landlord, the Agent for the Landlord was advised that if he was not prepared to respond to this specific claim I would dismiss the Tenant's claim, with leave to reapply. The Agent for the Landlord stated that he is prepared to proceed with the hearing.

The Agent for the Landlord, who has been named as a Respondent, stated that he is not the Landlord and he applied to have his name removed from the Application for Dispute Resolution. The Tenant agreed that the Agent for the Landlord is not the Landlord and consented to requested amendment. The Application for Dispute Resolution has been amended accordingly.

The Tenant stated that shortly after filing her Application for Dispute Resolution she served the Application for Dispute Resolution, the Notice of Hearing, and several documents she wishes to rely upon as evidence, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

I did not have the documents the Tenant wishes to rely upon as evidence before me at the hearing on July 24, 2013, although the Tenant stated they were submitted to the Residential Tenancy Branch. As the Tenant wishes to refer to the documents at the

hearing, I deemed it appropriate to adjourn the matter to provide the Tenant with the opportunity to resubmit those documents to the Residential Tenancy Branch.

The Tenant stated that she submitted some documents to the Residential Tenancy Branch on September 10, 2013. She stated that she does not believe that she submitted all of the documents she served originally served to the Landlord, although all of the documents submitted have been previously served to the Landlord. Although I did not have the physical documents submitted by the Tenant on September 10, 2013, copies of them were forwarded to me via email. I accepted these documents as evidence for these proceedings.

The Agent for the Landlord stated that on July 23, 2013 he personally delivered documents the Landlord wishes to rely upon as evidence to a person at a residence that the Tenant previously provided as a service address. The Agent for the Landlord acknowledged that the Tenant provided a different service address for this dispute resolution proceeding. As the matter has been adjourned, I find it reasonable to allow the Landlord to re-serve this evidence package to the Tenant at the service address she provided for this dispute resolution proceeding.

The Agent for the Landlord stated that he sent a package of evidence to the service address provided by the Tenant, via registered mail, on August 13, 2013. The Tenant stated that she has been out of town, that she did receive notification from Canada Post that she had registered mail, but by the time she attempted to retrieve the mail it had been returned to the sender.

I find that the Landlord's evidence package has been served to the Tenant pursuant to section 89(1)(d) of the *Act* and I accept those documents as evidence for these proceedings. In reaching this conclusion I was influenced, in part, by the fact that the Tenant had been told at the previous hearing that the Landlord would be reserving documents to her. I find that she should have taken reasonable steps to ensure that she would be able to receive that evidence, which included having someone check her mail if she was going to be away for an extended period of time.

Both parties were represented at both hearings. 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.

Issue(s) to be Decided

Is the Tenant entitled to a rent rebate in compensation for deficiencies with the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 05, 2011 and that on January 25, 2013 the Tenant sent the Landlord an email in which she informed him that she would be vacating the rental unit by February 01, 2013, which was prior to the end of the fixed term of the tenancy agreement.

The Landlord and the Tenant agree that when this tenancy began the rent was \$2,700.00 per month and that the parties subsequently agreed to reduce the rent to \$2,500.00, effective September 01, 2012. The Tenant stated that the rent reduction was offered to her, in part because she was a good tenant; in part because she was maintaining the Landlord's property; and in part as compensation for the delay with repairs. The Agent for the Landlord stated that the rent reduction was agreed to in compensation for the 3 months it took to complete the extra bedroom.

The Landlord and the Tenant agree that when this tenancy began the Landlord offered to construct an additional bedroom in the rental unit and that this agreement was recorded on the tenancy agreement that was signed on October 05, 2011.

The Tenant stated that by December of 2011 a wall dividing the garage was erected, which was one of the walls in the new bedroom; that the drywall on the newly erected wall was never mudded or painted; and that drywall was never installed on the remaining three walls of the new bedroom. The Tenant stated that the room was not properly insulated and was very cold.

The Agent for the Landlord stated that by November 24, 2011 most of the renovations were complete in the additional bedroom; that all of the walls in the bedroom were taped and mudded by November 24, 2011; that all of the walls in the bedroom were painted in December of 2011; and that the laminate flooring was installed sometime in December of 2011. The Landlord submitted an invoice, dated November 24, 2011, which indicates that the newly constructed wall in the garage was insulated, taped, and mudded.

I did not have any photographs before me that clearly depict the condition of the additional bedroom at the end of the tenancy. The Tenant submitted one photograph that shows the stair between the new bedroom and the rest of the house was unfinished, which she stated was taken near the end of the tenancy.

The Tenant submitted a copy of an email she sent to the Landlord, dated December 12, 2011, in which she speaks about the stair in the new bedroom not being built; the tile in the room not complete; and the lighting not installed. She makes no mention of the need to finish and paint the walls.

The Tenant submitted a copy of an email from the Landlord, dated January 22, 2012, in which he declares the room was finished except for a few outstanding issues.

The Tenant stated that there was a bathroom in the garage prior to the start of the tenancy, which was not insulated. The Landlord and the Tenant agree that the Tenant frequently complained about the temperature in the garage rooms and that on January 05, 2013 the Agent for the Landlord agreed to install additional insulation in the bathroom. The Agent for the Landlord stated that rigid insulation was installed over the existing drywall, which was then covered with another layer of drywall. He is not certain of the date of installation but the Landlord submitted a receipt for this renovation, which is dated February 07, 2013.

The Tenant submitted several photographs of this bathroom under construction. She stated that black mould was visible on the walls of the bathroom; that the bathroom smelled of mould; that the problem was reported to the Landlord; that the Landlord sprayed a substance over the walls and then painted the walls; but that the bathroom still smelled of mould. She stated that she submitted no evidence to show that the repair was inadequate.

The Agent for the Landlord agreed that mould was located in the bathroom in the garage; that a chemical substance designed to eliminate mould was sprayed on the walls; and that the walls were repainted. He stated that he believes this resolved the problem with mould.

The Landlord and the Tenant agree that this is an older home and that the Tenant frequently reported problems with a circuit breaker tripping when the Tenant used a variety of appliances at the same time. The Tenant contends that this problem was created by the new bedroom not being built in accordance with the building code.

The Agent for the Landlord stated that the electrical panel was inspected by an electrician when the new bedroom was constructed, who determined that the electrical panel was full so a new circuit could not be installed. He acknowledged that the Tenant could not use certain electrical outlets at the same time and he acknowledged that this was an inconvenience.

The Landlord submitted a copy of an email from an electrical safety officer, who declared that he had received a report that a breaker was tripping when several appliances were used and he directed the Landlord to have a site safety check completed by a licensed electrician.

The Agent for the Landlord stated that on March 22, 2013 an electrician was able to locate an unused circuit in the crawlspace and the electrical problem has been remedied.

The Tenant stated that on December 16, 2012 she observed a "fireball" coming from the overhead light in the master bathroom. She stated that this was reported to the Landlord immediately and that it was not repaired during her tenancy. The Tenant submitted an email, dated January 05, 2013, which indicates the faulty light was removed on January 03, 2013.

The Agent for the Landlord stated that this incident was reported to the Landlord; that he is not certain of the date of the report but he does not dispute it was reported on December 16, 2012; that the light was inspected by an electrician shortly thereafter; that the electrician determined that the fixture had short circuited causing the breaker to trip; that there was approximately a two week delay in repairing the light due to the need to order parts; and that he is not certain when it was repaired.

The Landlord submitted a letter from an electrical company, in which the author declares that a washroom fixture that had short circuited and tripped a circuit breaker had been replaced. The letter is dated July 17, 2013 but it does not specify the date of the repair.

Analysis

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. In these circumstances, the burden of proof rests with the Tenant.

On the basis of the undisputed evidence, I find that new bedroom was essentially complete by the end of December of 2011, with the exception of the stair and a few undisclosed minor issues. I favour the testimony of the Agent for the Landlord over the testimony of the Tenant in this regard, as the Tenant submitted no evidence to corroborate her testimony that the walls were not finished and the invoice, dated November 24, 2011, contradicts part of her testimony.

I found the Agent for the Landlord's testimony that the walls were complete was supported by the invoice, dated November 24, 2011, and by the photograph of the unfinished stair, which was submitted in evidence by the Tenant. Although only a very small area of the walls can be seen, it appears there are baseboards at the base of the walls. I find it highly unlikely that a landlord would finish the base of the walls before they had been mudded and painted.

I find that a delay of three months in constructing a new bedroom is not an unreasonable amount of time and I therefore find that the Tenant is not entitled to a rent reduction for this delay. In reaching this conclusion I was heavily influenced by the fact that construction had not begun when the parties signed the tenancy agreement on October 05, 2011, and the Tenant should have anticipated a reasonable delay.

Although the stair in the new room was never completed and there is evidence that there were some undisclosed deficiencies with the room, I am not satisfied that the deficiencies warrant a rent reduction.

In reaching this conclusion I was influenced by the fact the Tenant submitted no evidence, such as a declaration from a construction expert, to corroborate her claim that

the new room was not properly insulated. I find that the estimate, dated November 24, 2011, shows that the new wall was insulated. While I accept the Tenant's testimony that the room was cold, it is not uncommon for a room built in a garage to be cold, given the cement subfloor. I therefore cannot conclude that the insulation in the room did not comply with building codes.

I find that the Tenant is not entitled to compensation for any inconvenience related to installing insulation in the garage bathroom. I find that the insulation was installed in response to the Tenant's repeated complaints about the temperature in the garage rooms. As there is no indication that the installation was unduly delayed, I find that the Tenant is not entitled to a rent reduction.

I find that the Landlord made appropriate repairs to the bathroom in the garage when mould was discovered. I find that the Tenant submitted insufficient evidence to show that the Landlord did not respond appropriately to the mould that was found in the bathroom. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the bathroom still smelled of mould after that problem was remediated or that refutes the Agent for the Landlord's testimony that the problem was resolved. I therefore find that the Tenant is not entitled to a rent reduction for this mould problem.

On the basis of the undisputed testimony, I find that for the majority of this tenancy a circuit breaker would often trip when the Tenant used a variety of appliances at the same time. On the basis of the email from the electrical safety officer, I find that it is likely that the circuit breaker did not comply with safety and housing standards.

In addition to establishing that the Landlord breached the *Act* by failing to comply with section 32(1) of the *Act*, the Tenant must establish that the breach significantly interfered with her right to the quiet enjoyment of the rental unit before I can award compensation.

While I accept that having to ensure that a tenant does not use certain electrical appliances simultaneously is an inconvenience, I cannot conclude that it significantly interfered with the Tenant's right to the quiet enjoyment of the rental unit. I find that the Tenant has been more than adequately compensated for this minor inconvenience by the rent reduction that was introduced in September of 2012 and I find that an additional rent reduction is not warranted.

In determining this matter I note that the Tenant entered into a second fixed term tenancy agreement which, in my view, supports the conclusion that the problem with the breaker tripping was not a significant inconvenience.

On the basis of the undisputed testimony, I find that a light in the master bathroom short circuited on December 16, 2012. On the basis of the email submitted in evidence by the Tenant, dated January 05, 2013, I find that the light was not inspected until January 03, 2013. I find the email is the most reliable evidence, as the Agent for the Landlord

did not specifically recall the date of the initial inspection.

On the basis of the testimony of the Tenant, I find that the light was not repaired by the time the tenancy ended on January 31, 2013. I accept this testimony because the Agent for the Landlord was not certain of when the light was replaced and he acknowledged there was a delay in replacing the light due to a need to order parts.

I find that the delay in initially inspecting the light fixture interfered with the Tenant's right to the quiet enjoyment of her rental unit, given that it was reasonable for the Tenant to be concerned that there was an electrical hazard. I award the Tenant compensation for this breach, in the amount of \$50.00. The amount of compensation is based on the concern this incident would cause a reasonable person, rather than any finding that the delay actually placed the Tenant or the property at risk.

In reaching the conclusion that the delay did not place the Tenant or property at significant risk, I was heavily influenced by the letter from the electrical company, in which the author declares that a washroom fixture short circuited and tripped a circuit breaker, thereby terminating the power to the light.

I find that the delay in repairing the light was related to the need to order parts, which was beyond the control of the Landlord. While I accept that the delay was not the fault of the Landlord, I find that the Tenant did not have an overhead light in the bathroom for approximately one month, through no fault of her own, and I award her compensation in the amount of \$50.00 for this inconvenience.

I find that the Application for Dispute Resolution has some merit and I find that the Tenant is entitled to recover \$50.00 of the filing fee paid. I decline to award the full \$100.00 that was paid for filing the Application for Dispute Resolution, as I find that the Tenant has failed to establish that she is entitled to anywhere near \$5,000.00.

Conclusion

The Tenant has established a monetary claim of \$150.00 and I grant a monetary Order in 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: September 12, 2013

Residential Tenancy Branch