Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bentall Kennedy (Canada) LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, OLC, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking 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, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant and the landlord's agent (hereafter "landlord") appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties 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, neither party raised any issues regarding service of the application or the evidence.

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

Issue(s) to be Decided

1. Is the tenant entitled to orders for the landlord, such as requiring the landlord to make emergency repairs, other repairs and to comply with the Act?
2. Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties was that this tenancy began on June 1, 2012, monthly rent is $1310, and the tenant paid a security deposit of $655 at the beginning of the tenancy.

In addition to a request for orders for the landlord, the tenant's application filed August 5, 2013, contained a monetary claim in the amount of $4900, with the tenant having supplied no breakdown of the claim as required by section 59(2)(b) of the Act.

When asked to explain how she came up with the figure of $4900, the tenant explained that a claim of over $5000 would result in a higher filing fee.

The tenant submitted an extensive amount of documentary evidence, which included a binder containing a detailed reference to each point of the issues contained in her application with an explanation as to how the landlord had violated the Act, photographs in support of her contention that the landlord had deprived her of her rights to quiet enjoyment and had failed to make necessary repairs or comply with the Act, written communication between the parties, condition inspection reports, and tenancy agreements.

Emergency repairs and repairs-

In support of her application, the tenant presented that since the very beginning of the tenancy, she has experienced a backflow into her bathtub, the repair for which has not been addressed by the landlord. The backflow was described as water shooting up into the tenant's bathtub, leaving black dirt resulting in a health hazard.

The tenant said that she initially notified the landlord in writing on August 31, 2012, suggesting that the backflow came from a washing machine or dishwasher used in one of the rental units in the apartment building, which is not allowed, and that the landlord continued to ignore the repair.

The tenant said that all her initial contacts with the landlord were with another agent of the property manager company, who was succeeded in July 2013, by the agent attending this hearing.

The tenant further contended that the water supply has been contaminated, due to the backflow, and unsafe to consume.

The tenant submitted that the laundry facilities, with the small number of washers and dryers, were inadequate for the number of residents in the building.

In response, the landlord's agent said that she took over management of the property sometime in the summer and met with the tenant in July.

The landlord said that she has hired a company cleaning the roof and a plumbing company to make the repairs, which were started on August 30 and completed on September 3. The landlord contended that the issue has been resolved as it has not happened since that time.

Order for the landlord's compliance with the Act-

The tenant presented that the landlord's agent at the inception of this tenancy did not properly conduct a move-in inspection, explaining that the manager stood at the kitchen counter and filled in the report, without looking at anything in the apartment.

The tenant said that she filled in her own report and asked that it be placed in her file with the landlord.

The tenant also presented that she did not initially receive a copy of the tenancy agreement and had to make multiple requests of the landlord before she did receive a copy; however the lease was backdated, was received in two parts, and listed an incorrect name.

The tenant agreed that the current property manager, the agent attending this hearing, supplied a tenancy agreement, which was 413 days late.

Quiet enjoyment-

As to the tenant's contention that she has been deprived of her rights to quiet enjoyment, she explained that there is a car wash under her rental unit. In further explanation, the tenant said that other tenants are washing their cars underneath her unit, at all hours, and that car washing on the premises is prohibited in the tenancy agreement.

The tenant also contended that underneath her apartment is the main garbage collecting area, causing a serious insect problem, and that the heater/furnace used by the entire apartment building is also underneath her apartment, creating a lot of noise.

The tenant also contended that she is subject to smoking, which is not allowed in the tenancy agreement.

Due to these issues, the tenant argued that she does not have the use of her balcony.

The tenant questioned the safety of the water supply, as her humidifier ceased working. The tenant said she took the humidifier to a water company, and was informed that the backflow could cause contamination in the pipes.

In response, the landlord explained that the tenant's rental unit in the multi-level apartment building is an end unit, with a garage underneath. The landlord contended that although the tenant's tenancy agreement prohibits car washing, other tenants are able to wash their cars as their rights were "grandfathered" by earlier tenancy agreements. The landlord said that the garage where garbage is collected unfortunately is underneath the tenant's rental unit, and that due this is the only place on the property on which garbage trucks may collect the garbage.

The landlord submitted that the residential property is not designated as non-smoking.

The landlord said she called the water company and was informed that no problems with the water supply have been noted.

The landlord submitted that the tenant has been offered another rental unit on the premises, away from the garbage collection and car wash area, and has refused to move.

Analysis

While I have not mentioned specifically each piece of documentary evidence submitted by the tenant, I have thoroughly reviewed and considered the tenant's evidence.

Based on the relevant oral and written evidence, and on the civil standard of a balance of probabilities, I find as follows:

Emergency repairs and repairs-

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

I find it undeniable that the landlord did not address the matter of the backflow into the tenant's bathtub in a timely manner; however I was presented persuasive evidence from the current landlord's agent that as soon as she took over management of the property in July 2013, she immediately addressed the issue.

I also found that the landlord presented undisputed evidence that the issue of the backflow has now been resolved.

As to the tenant's contention that the laundry facilities were inadequate considering the number of residents, I do not find that this is a matter for repairs.

As to the tenant's contention that the water supply is contaminated, I find the tenant submitted insufficient evidence that this was the case. I do not consider photographs as proof of contamination; rather I would expect a report from an authorized company indicating as such.

Due to the above, I find the tenant submitted insufficient evidence that she is entitled to an order requiring the landlord to make repairs or emergency repairs to the rental unit at this time. I therefore dismiss her request for an order requiring the landlord to make repairs or emergency repairs to the rental unit.

It also appears that the matter of the tenancy agreement and the condition inspection report have been addressed, whether the tenant agrees that the condition inspection report was completed appropriately. I find that this would be a matter to address at the end of the tenancy.

While I am convinced that the landlord has now made sufficient repairs to address the matter of the backflow as of the beginning of September, the tenant is granted liberty to reapply for such an order and compensation if the problem again arises.

Compensation for loss of quiet enjoyment-

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I dismiss the tenant's request for compensation for an alleged lack of quiet enjoyment.

In making this decision, I find the tenant failed to minimize her claimed loss as she waited 14 months after the tenancy and the issue with the backflow began to make an application for dispute resolution, when filing such an application immediately after the claimed problem arose would be a reasonable measure to substantially reduce a claim. I therefore find the tenant has not complied with section 7(2) of the Act.

I also find that the tenant provided no specific details as to the elements of her request for $4900, other than she preferred to not pay an additional filing fee, and I was therefore unable to conclude if any compensation was justified.

I was also persuaded by the landlord's efforts in assisting the tenant in securing another accommodation in the residential property so that she would not be impacted by garbage collection, car washing, or furnace/heater noise, with the tenant's subsequent refusal. I also find I cannot order that the landlord to prevent car washing from the area below the tenant's rental unit or from smoking as I was not presented evidence that these other tenants are restricted by the tenancy agreement from washing cars on the premises or smoking in their rental units.

I was not persuaded that the landlord had violated the Act, as this particular unit was situationally located in the area of the garbage collection and car washing, which was viewed by the tenant at the beginning of the tenancy. I would expect that the tenant would take advantage of the landlord's offer to relocate within the residential property so that she would not be bothered by these noises.

Conclusion

For the reasons stated above, I find the tenant has not provided sufficient evidence to prove her claim for an order requiring the landlord to make repairs, emergency repairs, or compliance with the Act, or for compensation for loss of quiet enjoyment, and I therefore dismiss her application.

I also dismiss the tenant's request for recovery of the filing fee.

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: October 11, 2013

Residential Tenancy Branch