Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Equitable Real Estate Investment Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the tenant for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee.

Both parties attended and / or were represented at the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Preliminary Matters

While it appears that all documentary evidence submitted by the tenant to the Branch was also provided to the landlord, the landlord's agent claimed that not all of the tenant's documentary evidence had been provided 5 days in advance of the hearing. The tenant apologized for the late submission of some of the evidence.

Residential Tenancy Branch Rule of Procedure 3.5 speaks to "Evidence not filed with the Application for Dispute Resolution." In general, evidence must be served at least 5 days in advance of the hearing. However, in the circumstances of this dispute, much if not all of the evidence is familiar to the landlord, having been submitted as evidence in a related dispute heard on March 20, 2013. Accordingly, the tenant's late evidence will be considered in this hearing, as I find that its consideration does not unfairly prejudice the landlord.

Background and Evidence

In response to an application by the landlord, a previous hearing was held in a related

dispute between these parties on March 20, 2013. Some of the relevant particulars related to the tenancy are set out in the decision dated March 21, 2013 (file # 803117).

In summary, the tenancy began on October 1, 2011 and a security deposit of $625.00 was collected. Tenancy ended in December 2012, at which time monthly rent was $1,303.00. Pursuant to the decision, the landlord was ordered to retain the security deposit of $625.00, and a monetary order was issued in favour of the landlord in the additional amount of $232.95.

In relation to this present hearing, in part, the decision of March 21, 2013 reads as follows:

> In response to the landlord's application, the tenant made a documentary submission which includes details related to certain compensation sought from the landlord. This compensation pertains broadly to the tenant's allegation that there was mould in the unit, that the landlord is responsible for the mould, that the mould damaged certain of the tenant's possessions, and that the mould directly gave rise to the tenant's decision to end the tenancy. However, the tenant has not filed an application for dispute resolution. Accordingly, the tenant was informed that in order to pursue a claim against the landlord, she will be required to file a separate application for dispute resolution.

Thereafter, the tenant filed an application for dispute resolution on June 24, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

I find that the tenant's application for cancellation of a notice to end tenancy for cause does not apply in the circumstances of this dispute. Accordingly, that aspect of the application is hereby set aside.

Based on the documentary evidence and testimony, the various aspects of the tenant's application and my findings around each are set out below.

$625.00: *½ month's rent for October 2011*

This aspect of the application arises out of the tenant's claim that all window coverings included in the rent were not in place when tenancy began. While there is no evidence

that this matter was formally addressed between the parties at the start of tenancy, the tenant claims that the absence of window coverings delayed her move-in date. On the other hand, the landlord's agent testified her understanding was that the tenant had certain personal reasons for not completely moving into the unit on October 1, 2011. However, the landlord's agent did not categorically deny that all window coverings included in the rent were not in place when tenancy began. In the result, I find that the tenant has established entitlement to compensation in the nominal amount of **$25.00**.

$625.00: *return of security deposit*

Black's Law Dictionary defines *res judicata*, in part as follows:

> Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

The disposition of the security deposit was decided in the decision of March 21, 2013. Accordingly, pursuant to the rule of *res judicata*, this aspect of the application is hereby dismissed.

$1,305.00: *rent for the month of December 2012*

In regard to occupancy of the unit in December 2012, the decision dated March 21, 2013 reads, in part, as follows:

> By e-mail dated December 10, 2012, the tenants gave notice to end tenancy, and rent was paid up to December 31, 2012. The tenants testified that they effectively vacated the unit by on or about December 16, 2012.

The tenant has taken the position that the value of the tenancy was diminished as a result of mould found in the unit, and the negative impact the mould allegedly had on their health and certain of their possessions. The tenant first reported the existence of mould to the landlord in December 2012. An inspection report obtained by the tenant includes certain recommendations related to ventilation, windows and insulation of walls. However, in spite of improvements which might be made in any of these elements, I find there is insufficient evidence that the unit fails to comply with the "health, safety and housing standards required by law" pursuant to section 32 of the Act which speaks to **Landlord and tenant obligations to repair and maintain**. Further,

the tenant acknowledged that heating provided in the unit, and included in the rent, was not used; rather, the tenant used her own electric space heaters.

In a letter to the tenant from the landlord by date of December 14, 2012, the landlord states, in part, as follows:

> Historically, we have not had any exterior water leakage or interior mould problems in the [name of building] nor within your suite. When you moved into suite # 109 in October 2011, you must agree that the suite was completely mould and moisture free and your move-in Condition Inspection Report, of which you were given a copy, reflects such.

There is no evidence before me which serves to conclusively refute the claims made by the landlord, as above. Further, evidence submitted by the landlord includes a letter from the current renter in the subject unit in which he states, in part, that at "no time have I been troubled by mould in the apartment."

Mould is a microscopic organism that is present indoors and outdoors. Spores are always present in buildings, and prolonged high humidity within unheated and unwell ventilated spaces can contribute to its growth. Each person has a unique response to mould exposure, and most have little or no reaction. In the result, there are no exposure standards, however, work exposure to mould is regulated by WorkSafe BC. Testing is generally not recommended for homeowners, and interpretation of test results may not be very useful since there are no advocated "safe levels" of indoor moulds and the results will not report the health risks from the moulds.

In summary, I find that the tenant has failed to meet the burden of proving entitlement to compensation arising from the claim that ill health and damaged possessions were the result of the landlord's failure to "maintain their property and to provide a safe and hygienic living environment." Accordingly, this aspect of the application is hereby dismissed.

$700.00: *loss of wages in June 2012*

I find that the evidence undertaking to link occupant "VP's" time off work and the resulting loss of wages (for asthma related symptoms) in June 2012, with conditions in the unit, is speculative and inconclusive. It is commonly accepted that there are a range of physiological factors, as well as indoor and outdoor environmental irritants which may contribute to asthma attacks. For this reason and for reasons similar to those set out immediately above, this aspect of the application is hereby dismissed.

$339.00 ($330.00 + $39.00 HST): *cost of home inspection & report*

I find that this inspection was sought by the tenant without consultation with the landlord. I further find that there is no evidence that the landlord benefited in any particular way by being provided with a copy of the inspection report. I also find no evidence that modifications or renovations were made to the subject unit after the results of the report were made available to the landlord. Accordingly, this aspect of the application must be dismissed.

$80.00: *cost of cleaning "mouldy leather" purse*

Further to the absence of a receipt in support of this claim, for reasons similar to reasons set out above, this aspect of the application is hereby dismissed.

$200.00: *blind cleaning*

The tenant and occupant argued that the overly moist / humid conditions in the unit led directly to a need for the blinds to be cleaned at the end of tenancy. Accordingly, they do not consider that they should be responsible for this cost.

The decision of March 21, 2013 refers to Residential Tenancy Policy Guideline # 1 which addresses "Landlord & Tenant – Responsibility for Residential Premises," in part as follows:

> 3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

This matter was decided in the decision of March 21, 2013. In summary, it was found that the landlord established entitlement to recovery of costs related to blind cleaning in the amount of $133.95. I find, therefore, that the rule of *res judicata* must apply (as above), and this aspect of the application is therefore dismissed. Further, however, I note that there is no conclusive evidence that the blinds required cleaning as a result of "water stains due to inadequate windows."

$500.00: *cleaning and moving expenses*

While there are no receipts in support of these particular claims, more significantly, the tenant has failed to meet the burden of proving that responsibility for cleaning and moving expenses ought to be borne by the landlord pursuant to the unproven allegations that the landlord breached the Act. In the result, this aspect of the application is hereby dismissed.

$50.00: *filing fee*

As the tenant's success in this application has been nominal, I find that the tenant has established entitlement limited to recovery of **$25.00**, or half the filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **$50.00** ($25.00 + $25.00). Should it be necessary, this order may be served on the landlord, filed in the 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: October 15, 2013

Residential Tenancy Branch