Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution seeking a monetary order for compensation under the *Residential Tenancy Act* (the "Act") or the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. One witness appeared on behalf of the Landlord, provided affirmed testimony and the Tenant cross examined the witness.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The Tenant named the owner of the building where the rental unit is located as a Respondent in this matter. The Tenant had expected that the owner would attend the hearing, as the Tenant had been writing letters to the owner personally, despite the Agent informing the Tenant to correspond with the Agent.

It was explained to the Tenant that under the Act (section 74), the Landlord is allowed to appoint an Agent to represent them. Furthermore, under the Act a Landlord is allowed to appoint an Agent to run the day to day business of the rental unit property, which the Landlord has done here.

The hearing proceeded with the Agent for the Landlord representing the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

This tenancy began on July 4, 2004, with the parties entering into a written tenancy agreement. The witness who appeared on behalf of the Landlord, along with the Tenant signed an application for approval of the tenancy on May 2, 2004, and the condition inspection report and the tenancy agreement on July 8, 2004 (the "Witness").

At the time of these documents being signed, the spouse of the Witness was also an Agent for the Landlord.

The Tenant alleges that in May of 2004 he made an oral agreement with the spouse of the Witness that the Landlord would replace the carpet in the rental unit, would paint the apartment, would replace the fan above the stove, and repair a light fixture in the bathroom. The Tenant claims the Landlord failed to do this until August of 2013.

The parties agree that in August of 2013, the Landlord made certain repairs to the rental unit which included painting and re-carpeting. The Tenant testified that the stove fan was repaired in or around 2006 or approximately two or three years after the tenancy began.

The Tenant claims the poor condition of the rental unit was such that he was reluctant to have guests in the rental unit. The Tenant claims portions of the rental unit were not useable due to the poor condition of the carpets and the paint.

The Tenant testified that at the time he moved into the rental unit he found out that these repairs had not been made. The Tenant testified that although he was not happy that the repairs were not made, he did not raise this issue with the Landlord or their Agents, because the spouse of the Witness had passed away around the start of, or just prior to, the tenancy beginning. The Tenant testified he did not want to bring up the issue with the Witness as she had recently lost her spouse.

The Tenant testified he mentioned the carpet and other repairs repeatedly to the other Agents for the Landlord over the years. He testified that in October of 2005 an Agent for the Landlord saw the stove fan was not working and then did nothing.

The Tenant submitted in writing that between 2006 and July of 2013 the Landlord replaced a fan over the stove, and replaced faulty light fixtures in the bathroom, bedroom, and kitchen. During this time the Landlord also replaced a faulty light switch.

For the period from the start of the tenancy till the repairs were made in August of 2013, the Tenant claims **$3,345.00**, or 4.1% of the rent paid to the Landlord over the course of the tenancy in compensation for the failure to do repairs, and for having loss of use of portions of the rental unit. The Tenant further claims interest of **$250.00** on this amount, at a rate of 1.5% per annum.

The Tenant is claiming **$293.00** for the effective loss of use of the rental unit for 11 days in August of 2013, when the repairs set out below were being performed. The Tenant testified he was able to sleep in the rental unit but his TV and other furniture had to be moved out of the rental unit for the repairs to be performed.

According to the submissions of the Tenant, the repairs to the rental unit in August of 2013 include painting for the kitchen, kitchen cabinets, bathroom walls, the hallway, bedroom, living room, dining room, and three closets. The ceiling in one bedroom and one closet were also painted. The linoleum in the kitchen, bathroom, hall and hall closet was replaced. The carpet in the bedroom, living room, dining room and 2 closets was replaced. Two countertops were replaced in the kitchen, and the sinks and faucets were installed. The countertop in the bathroom was replaced and the sinks and faucets were installed. The shower curtain rod was also replaced.

The Tenant is claiming **$900.00** for his labour in August of 2013 to pack and move his belongings out of the rental unit for the repairs, and then to move these back into the rental unit and unpack these. The Tenant moved his possessions into a vacant rental unit across the hall, which was provided by the Landlord. The Tenant testified it took him 36 hours to do this and he claims $25.00 per hour for this work. The Tenant alleges that the Agent for the Landlord informed him verbally that the Landlord or his Agents would move his possessions for him.

The Tenant further claims **$200.00** for loss of use of the elevator in 2011. The Tenant claims the elevator was out of service for five to six weeks and the Tenant had to use the stairs during this time.

The Tenant testified that he did not bring all of these complaints forward until now because he does not like making claims or creating “hassles”, and he did not want to harass the Witness who had lost her spouse at the outset of the tenancy. The Tenant alleged that the Witness agreed with him in 2004 that the carpet should be replaced.

The Tenant testified he would have lost a month or two of rent if he had not moved into the rental unit in 2004 when he discovered the work agreed upon before the tenancy started had not been performed.

In reply to the Tenant's claims, the Landlord's Agents explained they took over property management at the rental unit in 2005. The Agent for the Landlord testified that in 2006 the rental unit was inspected and the Tenant was provided a form to fill out to indicate any problems with or repairs required to the rental unit. The Agent testified that the rental unit had been inspected several times since then and the Tenant never mentioned the carpet was supposed to be replaced or that he had an oral agreement with the spouse of the Witness for this work.

The Agent for the Landlord testified that the Tenant had appeared as a witness for the Landlord in 2010, when the Landlord was dealing with an eviction for another renter at the rental unit. The Agent testified that despite meeting with the Tenant to discuss this eviction matter, the Tenant never mentioned the carpet or any other work that needed to be done in the rental unit. The Agent testified that the Tenant never mentioned any oral agreement with any Agent for the Landlord for this work.

In evidence the Agent for the Landlord provided an inspection form from May of 2013. The form explains that an inspection of the rental unit is forthcoming, and sets out that if repairs are required, the renters in the applicable rental unit should write these in the space provided.

The form provided to the Tenant was completed with the following comments from the Tenant:

> "Responsibility for identifying necessary repairs lies with [the property management company]. On May 15, 2013, I expect an [employee of the management company] to list them below, and sign."

The Landlord has provided a copy of a letter from the Tenant to the owner of the property dated June 21, 2013, requesting the repairs that were eventually made and compensation for the nine year delay in making these repairs.

The Landlord also provided copies of other correspondence between the Tenant and the Agents for the Landlord following the June 21, 2013 letter to the owner.

This correspondence shows the parties negotiating work to be done and the conditions of the performance of the work.

During these negotiations, in July of 2013, the Landlord also offered to transfer the Tenant into a recently newly carpeted and freshly painted rental unit on a different floor of the building. The rent would be the same and the Landlord offered to reimburse the Tenant for the cost of transferring cable and utilities, etc. The Tenant refused this offer as he did not want to be in one of these units due to the heat in the summer. The parties then continued to make plans for doing work in the subject rental unit.

The Agent for the Landlord testified that they never agreed to pack the property of the Tenant. In a letter dated June 25, 2013, the Agent for the Landlord informs the Tenant he has to pack his own property, "... as we are not prepared to take on the liability of dealing with your personal possessions." There was some assistance to the Tenant to help him move some of his property.

The Agent for the Landlord testified that the Tenant was not displaced entirely out of the rental unit when the repairs were being performed, and they had to work around the Tenant's personal property left in the rental unit.

The Agent testified that at the time of the incoming condition inspection report the carpets were not reported as needing replacement. The Agent testified that over the course of the tenancy the rental unit went downhill and the carpets were not vacuumed on a regular basis. The Agent testified that over the course of several inspections, it did not appear that the Tenant performed regular cleaning in the rental unit.

The Agent for the Landlord testified that in 2011 the British Columbia safety authority required certain specified maintenance for elevators. The elevator in the building where the subject rental unit is located required this work. In April of 2011 the Landlord sent each renter in the building a notice informing them that work would soon be done on the elevator and asked if the renter would need assistance. The Tenant completed this form indicating he required no assistance, "... unless personal circumstances change."

The Agent explained that in 2011 when the work was done they had relocated two other renters in the building who requested assistance.

The Witness for the Landlord testified that she performed the incoming condition inspection report with the Tenant at the start of the tenancy. She testified she did not recall saying the carpet should be changed. Under cross examination from the Tenant

the Witness explained that if the carpets had to have been changed she would have written something to this effect on the report.

The Witness did not recall the Tenant telling her that the carpets were to be replaced. The Witness had no recollection of an oral agreement between the Tenant and her deceased spouse. The Witness agreed with the Tenant that she had made a mistake on the report regarding curtains in the rental unit.

The Witness agreed with the Tenant that he had attended every inspection of the rental unit. The Tenant asked the Witness if he had been very attentive telling the Agents about all his problems with the rental unit. The Witness testified that the Tenant had not listed any of the repairs on the inspections sheets presented to him over the years. The Witness testified that she explained to the Tenant that the Agents do not live in the suite and that is why they asked the Tenant to list any repairs or work required or requested.

The Witness agreed with the Tenant that during the inspection conducted May 15, 2013, that the Tenant took her around the rental unit and showed her the problems he was requesting repairs for.

The Tenant cross examined the Witness on the repair of the elevators in the building. The Witness testified that the work had taken 17 days. The Tenant asked if the form he had completed should have enquired of him, if it would he be “inconvenient” for him rather than asking if he required “assistance” during the elevator repairs. The Witness explained the form was for people requiring assistance.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I dismiss all of the Tenant's claims, without leave to reapply.

I find the Tenant had insufficient evidence to prove the Landlord was in breach of the Act or the tenancy agreement. I further find the Tenant had insufficient evidence support his claim that he had an oral agreement with the spouse of the Witness for the Landlord to do repairs to the rental unit before he moved in.

I accept the testimony of the Witness for the Landlord that if any such agreement for repairs had been made with the Tenant prior to the tenancy starting these likely would have been recorded in writing on one of these forms. I found the testimony of the Witness to be straight forward and credible. I find that the application to rent form, the tenancy agreement and the condition inspection report are evidence that that cannot be over turned by the Tenant's testimony about an oral contract over and above these, pursuant to the parole evidence rule. Furthermore, these documents were all signed by the Witness for the Landlord and the Tenant. The Tenant had insufficient evidence he had any dealings with the spouse of the Witness, save for his testimony the spouse showed the rental unit to the Tenant.

I also accept the testimony of both the Witness and the Agent for the Landlord that during the nine plus years of the tenancy the Tenant never mentioned to them his allegation that he had an oral contract with the spouse of the Witness. The Tenant was present for several inspections of the rental unit during these years, had meetings with the Witness and the Agent for the Landlord for a residential tenancy matter and wrote letters to the Agent for the Landlord in April of 2007 and in May of 2010, and did not

mention the oral contract, or request that these specific repairs be made to the rental unit.

Furthermore, a few repairs had been made to the rental unit during this time and the Tenant has insufficient evidence to prove he brought up the issue of the other requested repairs or the oral contract he claims he had.

Even if the Tenant could establish such an oral agreement for repairs had been made (which I do not find to be the case), I find the Tenant failed to mitigate his losses by waiting nine years before bringing up the subject of the carpet or the painting in the rental unit. Section 7(2) of the Act states:

> …
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss**.
>
> [Emphasis added.]

I find it was not reasonable for the Tenant to wait nine years to bring forward his claims and therefore, he failed to minimize or mitigate his alleged losses in any event.

For the same reasons, I do not allow the Tenant compensation for any inconvenience he went through when the elevator was under repair. This event occurred two years ago and the maintenance for the elevator was required to be performed. The Tenant was offered assistance at the time and chose to refuse the assistance. I find the Tenant is not able to now claim a loss, when he refused the assistance of the Landlord in the first instance, which was, provided to other renters who required it. In fact, I find it is likely that this would have been the most appropriate compensation to the Tenant at the time, as it would have alleviated his need to use the stairs.

I also find the Tenant is not entitled to moving expenses or compensation for the time it took to perform the repairs in the rental unit in August of 2013. I note it appears that the Tenant was assisted with some of the moving, but the people assisting him would not move the electronics or other fragile items of the Tenant.

Pursuant to Policy Guideline 16, I find the Tenant requested repairs to the rental unit in or about May of 2013, and the parties then took some time to come to an agreement to have the repairs performed. Any delay in the repairs was due to these negotiations,

largely instigated by the Tenant, and not due to any negligence or lack of diligence on the part of the Landlord. I further find the disruption to the Tenant was minimized by the Landlord, and the Tenant benefited by the repairs and the disruption these entailed. These disruptions appeared to be simply a minor inconvenience to the Tenant and the Tenant certainly benefitted from the repairs. Furthermore, the Tenant had no proof of losses arising from these disruptions, such as receipts for eating out etc.

I further note that pursuant to Policy Guideline 6 the temporary discomfort or inconvenience of the Tenant does not constitute a basis for a breach of the covenant of quiet enjoyment.

For these reasons I dismiss the Application of the Tenant without leave to reapply.

Conclusion

The Tenant has failed to prove the Landlord breached the Act, the tenancy agreement or the covenant of quiet enjoyment. I find the Tenant had insufficient evidence that he had an oral agreement in 2004 for repairs to the rental unit. Even if that were the case (which I do not find), the Tenant failed to mitigated these losses by bringing these claims forward for some nine years. The Tenant is not entitled to compensation for temporary discomfort or inconvenience as a result of his request for repairs to the rental unit which were of benefit to him.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 18, 2013

Residential Tenancy Branch