Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Malabar Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent and utilities, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid utilities and to keep all or part of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on December 01, 2012; that the Tenant agreed to pay monthly rent of $1,595.00 by the first day of each month; and that the Tenant paid a security deposit of $797.50.

The Landlord and the Tenant agree that this tenancy ended on November 30, 2013 and that the Tenant provided a forwarding address, either by email or text message. The Tenant stated that the forwarding address was provided on November 30, 2013,

December 01, 2013, or December 02, 2013. The Landlord stated that it was provided on December 10, 2013, or December 11, 2013.

The Landlord and the Tenant agree that the Tenant lived in the main portion of this residential complex and that there were two other occupied rental units in the complex. The parties agree that the Tenant was required to pay the gas and hydro costs for the entire complex, which included gas and hydro consumed by the occupants of the other units.

The Landlord and the Tenant agree that the Landlord paid the Tenant a monthly sum in compensation for the hydro/gas consumed by the other occupants. The parties agree that during the last 5 months of the tenancy the monthly compensation was increased by $45.00, to $160.00.

The Tenant argued that the term of the tenancy agreement that required him to pay hydro and gas costs for the entire residential complex was unconscionable, even though the Landlord did pay a fixed amount for those costs. He stated that he was conscious of the amount of gas/hydro consumed during the tenancy, as he was paying the bills, and that the occupants of the other suites may have been less conscious of energy consumption, as those costs were included in their rent. He stated that one of the occupants in the other suites always left a window open for her cat, which would have increased heating costs.

The Landlord stated that when the previous occupant vacated the rental unit she had the tank dipped to determine how much oil was in the tank; that he was present when the tank was dipped; that the individual dipping the tank informed the former occupant and the Landlord that there was $1,000.00 worth of oil in the tank; and that he paid the former occupant $1,000.00 for the oil left in the tank. The Landlord submitted no documentary evidence to corroborate this testimony.

The Tenant stated that when the tenancy began the Landlord informed him that there was $1,000.00 worth of oil in the tank; that he asked the Landlord how he knew how much oil was in the tank; and the Landlord informed him it had been measured.

The Landlord submitted a copy of a tenancy agreement, which is signed by the Tenant and the Landlord. At the top of the front page of the agreement the Landlord added the following entry: "On Nov. 29th oil tank was measured and paid (name redacted) $1,000.00 for the oil in the tank". The Landlord has initialed the entry but the Tenant has not.

The Landlord stated that the oil tank was completely empty at the end of the tenancy. He stated that on December 01, 2013 he put $725.00 worth of oil in the tank and on January 14, 2014 he put another $600.00 worth of oil in the tank. The Landlord submitted no documentary evidence to corroborate this testimony.

The Tenant stated that he does not know how much oil was left in the tank at the end of the tenancy. He stated that on October 17, 2013 he paid $620.65 for heating oil and that he rarely stayed at the rental unit between October 17, 2013 and November 30, 2017. The Tenant submitted a copy of a bank statement that indicates this amount was paid to a fuel supply company on October 17, 2013. The Tenant argued that if the tank was empty at the end of the tenancy, it is apparent that he was paying for far more than his share of the oil costs.

Analysis

Residential Tenancy Branch guidelines suggest that tenants must leave oil tanks in the condition that they were in at the start of the tenancy. This guideline suggests that if the oil tank had $1,000.00 in it at the start of this tenancy, it should be left with $1,000.00 in it at the end of the tenancy.

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damage or loss, which in these circumstances is the Landlord. I find that the Landlord has submitted insufficient evidence to establish that there was $1,000.00 worth of oil in the tank at the start of this tenancy.

In reaching this conclusion, I was heavily influenced by the absence of any evidence that corroborates the information the Landlord provided to the Tenant at the start of the tenancy. In my view, the Landlord had an obligation to provide the Tenant with some sort of evidence that confirmed this information, such as documentary evidence from the oil company that established the amount of oil in the tank or evidence from the former occupant that corroborates that the tank was measured and that she was told there was $1,000.00 worth of oil in the tank.

In determining that the Landlord has not clearly established the amount of oil in the tank at the start of the tenancy, I have placed little weight on the notation the Landlord added to the tenancy agreement. This notation simply corroborates the Landlord's testimony that he told the Tenant there was $1,000.00 worth of oil in the tank. As the Tenant did not also sign the notation, I cannot conclude that the Tenant agreed with the information provided to him.

I find that the Landlord has also submitted insufficient evidence to corroborate his testimony that the tank was empty at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as documentary evidence from an independent party who dipped the tank, which corroborates this testimony.

The Landlord's uncorroborated testimony that $725.00 worth of oil was added to the tank on December 01, 2013 does not help me determine that amount of oil in the tank at the end of the tenancy, as I have no information regarding the capacity of the tank or how much it would cost to fill the tank. If, for example, the tank holds $2,000.00 worth

of fuel, it is entirely possible that the tank held $1,725.00 worth of fuel after the $725.00 was added.

As the Landlord has submitted insufficient evidence to establish that there was $1,000.00 worth of fuel in the tank at the start of the tenancy and that there was not $1,000.00 worth of fuel at the end of the tenancy, I dismiss the Landlord's claim for compensation of $1,000.00.

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if it is unconscionable, which means it is a term that is grossly unfair or oppressive to one party. Although the Tenant has raised the argument that the term on the tenancy agreement requiring him to pay the hydro and gas costs for the entire residential complex is unconscionable, I find that it is not necessary for me to consider that argument. Even if I determined this term of the tenancy agreement was enforceable, the Landlord's claim has been dismissed on the basis that the Landlord has failed to establish the amount of oil in the tank at the start, and the end, of the tenancy.

I find that the Landlord's application has been without merit I dismiss the Landlord application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish that he is entitled to retain any portion of the security deposit, I find that the Landlord must return the deposit of $797.50 that was paid. I therefore grant the Tenant a monetary Order for the amount of $797.50. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: February 06, 2014

Residential Tenancy Branch