Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, CNC, CNR, OPT, AAT, LAT, RR, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act). The tenant had also made requests for other orders including orders to cancel Notices, an order of possession for the tenant, an order allowing access, an order to change the locks and an order to refund the tenant's security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

Tenant's Claims

At the outset of the hearing it was established that the tenant had been removed from the unit on April 15, 2014 pursuant to an Order of Possession and writ obtained prior to this proceeding today. Therefore, the tenant's requests for orders to cancel the Notices to End Tenancy, a swell as the requests for an order of possession for the tenant, an order allowing access and an order to change the locks, are all moot and need not be determined at this hearing.

It was also established that the tenant had not yet provided the landlord with her forwarding address in writing. Therefore I find that the tenant's claim for a

monetary order against the landlord ordering the landlord to refund the security deposit is premature.

The tenant was permitted to provide her new forwarding address to the landlord during the hearing and the landlord confirmed that he wrote it down. Accordingly, under section 38 of the Act, the landlord has 15 days from today's date to either refund the tenant's security deposit or make an application seeking to retain it.

The hearing proceeded with respect only to determining the tenant's monetary claims for damages and loss.

Evidence

The landlord objected that he did not have sufficient time to review or respond to the applicant/ tenant's second evidence package as it was not served on the landlord until May 28, 2014.The tenant made the application for Dispute Resolution more than one month earlier, on April 14, 2014.

Rule 3.4 of the *Residential Tenancy Branch Rules of Proced*ure require, to the extent possible, that an applicant file copies of all available documents, photographs, video or audio evidence *at the same time as the application is filed.*

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* states that:

a) Copies of any documents, photographs, video or audio evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.

c) If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the arbitrator must apply Rule 11.5 [Consideration of evidence not provided to the other party or

the Residential Tenancy Branch in advance of the dispute resolution proceeding].

In the case before me, because the landlord testified that he received the evidence on May 28, 2014 with the hearing scheduled to take place on June 4, 2014, I find that although the tenant had technically complied with the requirements under the Act, the landlord would be prejudiced by the fact that the tenant inexplicably delayed submitting the evidence for several weeks after making the application.

I find I must consider the landlord's complaint that there was not sufficient time for the landlord to respond to the tenant's evidence.

The question is whether or not the landlord was prejudiced by the short time frame left in which to submit a response to the tenant's second evidence package.

To accommodate the situation, the tenant was permitted to give verbal testimony describing the various documents in the tenant's evidence package and the landlord was permitted to verbally respond.

Issue(s) to be Determined

Is the tenant entitled to monetary compensation under section 67 of the *Act* for damages or loss?

Background and Evidence

The tenancy began in May 2010 and the rent was $1,000.00 per month. A security deposit of $500.00 was paid and is being held by the landlord.

The tenant testified that the landlord gave permission for the tenant to install a fence, but failed to pay for the costs. The tenant stated that they incurred expenses of over $1,000.00 and the tenant seeks to be reimbursed. The tenant testified that they also assisted the landlord by installing gates at a cost of $300.00 for materials and $320.00 for labour, which the tenant feels entitled to recoup from the landlord.

The landlord testified that he did consent to the tenant's request to up a fence and already paid for some this project. The landlord testified that he also agreed to permit the tenant to install gates, but he did not agree to pay for the gates. The landlord's position is that no further compensation is warranted.

The tenant testified that they felt that insulation in the basement was necessary and they spent approximately $900.00, including $800.00 labour and $100.00 for materials. According to the tenant, the job was approved by the landlord and the tenant's position is that the landlord should pay for the cost.

The landlord disagrees with the claim against the landlord for the cost of installing insulation and stated that he never agreed to pay for this project.

The tenant testified that they had built up a garden in the yard, bringing in topsoil, fruit trees and berry bushes at a cost of approximately $1,800.00 for materials and labour. The tenant testified that the landlord had approved the work, but never paid for these enhancements and then refused to permit the tenant access to the premises to remove any of the plantings or materials.

The landlord acknowledged that permission was given to the tenant to plant a garden but stated that there was no discussion about the landlord paying for these changes. The landlord pointed out that the tenant had removed a perfectly good lawn and left the yard all dug up and in need of attention. The landlord pointed out that this will actually cost the landlord money to restore the lawn.

The tenant is also claiming $100.00 for the landlord's failure to maintain the decks and steps According to the tenant, she slipped on the steps injuring herself and also received complaints from the postal delivery person. The tenant testified that she installed roofing tiles on the steps to make them safer.

The landlord disagrees with this claim and does not feel that the tenant should be compensated for the alleged deficiencies and alterations to the deck and steps..

The tenant stated that the landlord failed to reimburse the tenant for the $701.43 cost of an emergency repair to the toilet that occurred in February 2014. The tenant testified that the landlord was not available when the toilet malfunctioned, but had left an emergency contact numer for a relative who authorized the tenant to have the toilet repaired. The tenant is seeking $701.43 for the repair cost plus $500.00 for the two-week loss of the toilet.

The landlord stated that, at no time did the tenant provide the landlord with a copy of the invoice for the emergency repairs. According to the landlord, he did not get the documentation until the landlord received the tenant's evidence package for this hearing. The landlord testified that he attempted to handle the repairs when he returned from his trip, but the tenant refused to grant him access to the unit. The landlord

disputed the tenant's claim that they were without the use of a toilet for two weeks and does not feel that compensation is warranted.

Analysis

In regard to the tenant's claims for compensation relating to the fence, gates, insulation, yard work, steps and deck repairs, I find that an applicant's right to claim damages against the landlord is governed by section 7 of the Act.

This section of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, to make it suitable for occupation by a tenant.

I find that the majority of the above claims, including claims for the fence, gate, insulation, and yard, do not relate to matters that would constitute a violation of section 32 of the Act and thus would fail element 2 of the test for damages.

In the alternative, if I accept the tenant's testimony that the parties made some form a mutual agreement between them for tasks to be done by the tenant and paid for by the landlord, then such a work-for-labour agreement is not likely governed by the Residential Tenancy Act.

Section 62 of the Act gives the dispute resolution officer authority to determine

> (a) disputes in relation to which the director has accepted an application for dispute resolution, and
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> (b) any matters related to that dispute that arise under the Act or a tenancy agreement.

The Arbitrator may also make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act. And may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement .

Section 1 of the Act, defines "*tenancy agreement*" as follows:

> ***"tenancy agreement"*** *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

In situations where a landlord and tenant enter into a subsequent agreement in which the tenant exchanges labour for compensation or for credit towards the payment of rent, this is considered as a separate contract or employment arrangement. Although associated with the tenancy, I find that contracts of this nature cannot be considered as a valid part of the tenancy agreement under the Act because it places the parties outside their roles as landlord and as tenant.

Therefore, even if I accept that the parties had entered into a reciprocal arrangement for repairs or improvements to be done, I find that I lack jurisdiction under the Act to determine contractual agreements, outside of the written tenancy agreement. For this reason, I find that I cannot take into consideration any factors relating to the above claims. Any disputes that arise, other than strictly tenancy matters, must be dealt with in another forum such as Small Claims Court.

In regard to the tenant's allegation that the steps and deck were dangerous, I find that, in a situation such as this, the tenant must prove that the violation was reported to the landlord and that the landlord was given a reasonable opportunity to deal with the hazard. If the tenant is able to prove that the landlord then failed to act, the tenant could make an application for dispute resolution to seek an order forcing the landlord to rectify the problem. Other than emergency repairs, he Act does not permit a tenant to make repairs or improvements on the landlord's behalf and then seek reimbursement.

In regard to the tenant's claims for reimbursement for the emergency toilet repairs, I find that section 33(1) defines, "*emergency repairs"*, as repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. I accept that the problems the tenant had with the toilet do qualify as emergency repairs under the Act.

Under the Act, a tenant has the right to have emergency repairs made when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The Act also states that a landlord may take over completion of an emergency repair at any time and that a landlord must reimburse a tenant for amounts paid for emergency repairs.

In this situation, I accept that the tenant contacted the landlord's agent and did receive authorization to have the repairs done. I therefore find that the tenant is entitled to be reimbursed in the amount of $710.43 for the cost of these repairs.

In regard to the tenant's claim for a retroactive rent abatement for being deprived of the use of the toilet for 2 weeks, I find that, the landlord's contractual agreement with the tenant was compromised and tenancy genuinely devalued by the loss of use of the toilet for a period of two weeks. I therefore grant the tenant a 40% pro-rated rent abatement applicable to the two-week period in question. I find that the tenant is entitled to be compensated in the amount of $200.00 for the 2-week loss of use of the toilet.

Based on the testimony and evidence presented by both parties during these proceedings I find that the tenant is entitled to monetary compensation in the amount of $910.43., comprised of $710.43 for toilet repairs and $200.00 abatement for devalued tenancy due to loss of use of the toilet for 2 weeks.

I hereby grant the tenant a monetary order for $910.43. This order must be served on the landlord and may be enforced through BC Small Claims Court if unpaid.

The remainder of the tenant's monetary claims for damages are dismissed without leave to reapply.

However, I order that the tenant's security deposit, now held by the landlord, must be dealt with in accordance with section 38 of the Act.

Conclusion

The tenant is partly successful in the application and is granted a monetary order.

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: June 04, 2014

Residential Tenancy Branch