Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAITON REALTY GROUP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDC ERP RP RR FF

Preliminary Issues

As each party checked into this proceeding, the Agents for the Landlord affirmed that they are employed as the property managers for the incorporated company listed as the agent for the owner on the tenancy agreement. Accordingly, I amended the style of cause on this application to include the corporation's name, in accordance with section *64 (3)(c)* of the *Act.*

Upon review of the Tenant's application for Dispute Resolution, he testified that he has decided to vacate the property by June 30, 2014, and no longer wishes to dispute the 1 Month Notice issued April 25, 2014. He confirmed that he was withdrawing his requests to: cancel the notice for cause; have the landlord make emergency repairs and repairs to the unit, site or property, and to request a future rent reduction. The Tenant advised that he wished to proceed with his application for monetary compensation.

As noted above the Agents of the Landlord/Owner are property managers. The tenancy agreement lists two Tenants; however, the application for Dispute Resolution lists only one Tenant who appeared at the hearing and stated he was representing both Tenants. Accordingly, for the remainder of this decision, terms or references importing the singular shall include the plural and vice versa for both the Landlords and the Tenants.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 23, 2014, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Lanldord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party

was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Upon review of the evidence the Tenant confirmed receipt of the Landlords' evidence; however the Landlords denied receiving the Tenant's evidence. The Tenant testified that he personally left his evidence at the Landlords' office on June 3, 2014 and that the evidence consisted of numerous photographs and a couple of e-mails. The Tenant argued that the Landlords' office has a history of losing documents because when he first spoke with the Landlord, F.M. about his application for Dispute Resolution, he claimed that they had not received it and that F.M. later found it in S.K.'s mail slot.

At the time of this proceeding the Tenant's evidence had not been placed on the file. Upon review of the electronic record I confirmed that the evidence consisting of 39 photographs and two pages of an e-mail conversation had been personally delivered to the *Residential Tenancy Branch* on June 3, 2014, as affirmed by the Tenant. The hard copy documents were received on file on June 17, 2014.

After careful consideration of the foregoing, I accept that the Tenant served the Landlords with his evidence, in accordance with section 88 of the Act. Accordingly, I considered both party's evidence and testimony in making my decision, pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure.*

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy listing two Tenants. The tenancy commenced on February 1, 2013 and the Tenants were required to pay rent of $1,950.00 on the first of each month. On or before February 1, 2013 the Tenants paid $975.00 as the security deposit. The parties did not complete or sign a condition inspection report form.

As noted above the Tenant testified that they have decided not to follow through with disputing the 2 Month Notice as they have decided to vacate by June 30, 2014, the effective date of the Notice. The Tenants did not pay June 1, 2014 rent as compensation for receiving the Notice.

The Tenant stated that he is seeking $3,500.00 in monetary compensation for having to live in a house that is unsafe; that has a broken deck that they were unable to use; a leaky garage; infestation of rodents; having to live with items that do not work as they should; and coming home to find the Landlords and their agents in and at the property without notice.

The Tenant submitted that despite his requests for repairs the Landlord kept telling them that they rented the property “as is”. He would keep reminding the Landlord that they cannot rent a property “as is” as that is against the Act and he continued to make verbal requests for repairs. He put his repair requests in writing on March 25, 2014, only to be served with an illegal eviction notice. As a result he is seeking $3,500.00 in compensation, which is what he feels is the estimated value off the cost to complete the required repairs.

The Landlords testified that this Tenant has been confrontational and very difficult to deal with. They confirmed that they had discussions with the Tenants that the owner had no intentions to repair the carport / garage area. They admitted that the deck required replacement but that they told the Tenant it would not be completed until the summer of 2014, not the summer of 2013.

Upon review of the Tenants’ written repair requests the Landlords argued that all the items were new requests, except for the deck and carport/garage. They argued that when the unit was first rented the fence was not damaged and therefore, the Tenants or their dog caused the damage and the Tenants should repair it. The Landlords stated that despite their requests to gain access to conduct the repairs, the Tenant has refused them access claiming that they did not provide enough notice. The Landlords confirmed that there was one incident when they could not provide enough notice but did not feel it was a problem because they were just having the architect look at the outside of the house and not the inside.

In closing, the Landlords argued that they had conducted numerous repairs at the request of the Tenants, which included providing pest control, replacing the fridge, and reimbursing the Tenants for a broken faucet they had repaired.

The Tenant disputed the Landlords’ testimony and argued that they never provided proper notice of entry. He stated that he just wanted the Landlords to follow the Act and because they refused to he has to move because of being issued an illegal eviction notice that was issued in retaliation to his written request for repairs and his application for Dispute Resolution.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 5 of the Act stipulates that landlords and tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The evidence supports that the owner / Landlords refused to enact repairs to the carport/garage arguing that the property was rented as is; which I find to be a breach of section 5 and 32 of the Act, as noted above. Furthermore, there is evidence that the deck was in need of repair, from the onset of this tenancy, and the deck repairs were being put off until sometime during the summer of 2014. As per the evidence, I accept the Landlords submission that the March 2014 letter / e-mail were the first communication they received in writing requesting those repairs.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;

> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the undisputed evidence and testimony that the Owner/Landlords refused to repair the carport/garage and delayed in completing repairs to the deck. I further accept that there were occasions that the Landlords attended the rental unit without providing proper notice of entry.

Contrary to the Landlords' assertion that they did not need to provide adequate notice because they were only going to be in the yard, I find that when the residential property is valued somewhat based on its quiet location in an urban centre and the legislation indicates that a tenant is entitled to quiet enjoyment including "freedom from unreasonable disturbance" the right, in this case, is intended to include freedom from unreasonable interruptions of privacy.

While I accept that the Landlords were taking steps to assess the required deck repairs, and were enacting the owner's wishes by not repairing the carport/garage, I find it undeniable that the Tenants suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy. As a result, I find the Tenant is entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

> or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the forgoing, I hereby award the Tenant compensation for loss of quiet enjoyment in the amount which is calculated at 2% of the rent for the sixteen months that rent was paid (2% x $1,950.00 x 16) = **$624.00.**

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order for **$674.00** ($624.00 + $50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: June 18, 2014

Residential Tenancy Branch