



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, PSF, RR, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, an Order requiring the Landlord to provide services or facilities required by law; for authority to reduce the rent for repairs, services, or facilities required by law; and to recover the fee for filing this Application.

At the outset of the hearing the Tenant withdrew the application for an Order requiring the Landlord to provide services or facilities required by law and she stated that the matter of the security deposit overpayment has been resolved.

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

On June 09, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant by a process server on June 10, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 11, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to someone in the Landlord's home on June 11, 2014. The Landlord acknowledged receipt of these documents on June 11, 2014 and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being unable to use the rental unit for a period of time and for the cost of obtaining a fire inspection certificate?

Background and Evidence

The Landlord and the Tenant agree that the Tenant is paying \$1,100.00 in rent for the lower unit of this residential complex and \$1,400.00 in rent for the upper unit, which are separate, self-contained units.

The Tenant stated that she lives in the upper rental unit; that she had been operating a daycare facility in the lower rental unit; that the daycare was not operating between January 19, 2014 and April 01, 2014; and that her son was living in the lower unit in January of 2014.

The Landlord and the Tenant agree that on January 19, 2014 there was a fire in the dryer vent, which temporarily rendered the lower unit unsuitable for occupation.

The Landlord and the Tenant agree that on March 21, 2014 the Landlord informed the Tenant, via email, that the lower unit was suitable for occupation and that the unit has been inspected by the "city inspector". A copy of this email has been submitted in evidence.

The Tenant stated that she did not believe she could use the lower unit as a daycare facility until she had a fire inspection certificate that confirmed the smoke alarms between the upper and lower unit were interconnected. She stated that the alarms must be interconnected because she was operating a daycare in the lower unit. She submitted no evidence to corroborate this statement.

The Landlord and the Tenant agree that they exchanged a series of emails, which were submitted in evidence. In an email dated March 30, 2014 the Landlord provided the Tenant with the name and phone number of the electrical company that interconnected the fire alarms. The Tenant stated that she did contact the electrical company who told her that "it was all okay", but did not specifically inform her that the fire alarms had been interconnected.

The Landlord and the Tenant agree that on April 06, 2014 the Landlord provided the Tenant with a letter from the electrical company, which was also submitted in evidence. This letter confirms that the smoke alarms have been interconnected.

The Landlord submitted a letter from a building inspector from the City of Williams Lake, dated May 12, 2014, in which the inspector declared that the "final inspection" was approved on March 21, 2014. In the letter the inspector declared that on an undisclosed date he had been informed by a Fire Protection Officer that the smoke alarms in both units must be interconnected and that he has spoken with an electrician who has confirmed the alarms have been interconnected.

The Landlord and the Tenant agree that the Tenant paid \$4,510.00 in rent for the period between January 01, 2014 and March 31, 2014. The parties agree that the rent

reduction of \$2,990.00 was in compensation for being unable to use the rental unit between January 19, 2014 and March 31, 2014. The Tenant is also seeking compensation, in the amount of \$1,100.00, for being unable to use the rental unit in April of 2014.

The Tenant is also seeking compensation, in the amount of \$150.00, for the cost of a fire inspection. She stated that after the fire on January 09, 2014 she was required to have the lower rental unit inspected before she could operate a daycare facility in that unit.

Analysis

Section 32(1) of the *Residential Tenancy Act (Act)* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with health, safety, and housing standards required by law. I find that the lower rental unit had been properly repaired after the fire of January 19, 2014 and was suitable for residential occupancy by April 01, 2014. I therefore dismiss the Tenant's application for compensation of \$1,100.00 for being unable to use the lower unit for any portion of April.

In reaching this conclusion I was heavily influenced by the letter from a building inspector from the City of Williams Lake, dated May 12, 2014, in which the inspector declared that the "final inspection" was approved on March 21, 2014. In my view, this letter clearly indicates that the residential property complies with health, safety, and housing standards required by law. On the basis of the emails provided in evidence, I find this information was provided to the Tenant and that she knew, or should have known, that the rental unit was suitable to be lived in.

I note that the *Act* does not require residential units to conform to commercial building/safety standards. I therefore find that even if there are commercial standards that require daycare facilities to have smoke alarms connected with other units in a building complex, those standards are not enforceable under the *Act*, providing the same standards do not apply to residential property.

I further note that the *Act* does not apply to living accommodation included with premises that are primarily occupied for business purposes. For periods when the lower rental unit was/ is primarily used as a daycare facility, I find that I would not have jurisdiction over that tenancy. As the lower rental unit was being occupied by the Tenant's son at the time of the fire and the daycare was not operating as a daycare between January 19, 2014 and April 01, 2014, I find it reasonable for me to assume jurisdiction over this particular dispute. It would not be reasonable, however, for me to apply commercial standards to the tenancy, as I do not have jurisdiction over commercial tenancies.

On the basis of the Tenant's undisputed testimony, I accept that after the fire on January 09, 2014 the Tenant was required to have a fire inspection completed prior to

resuming her daycare business. As that requirement relates to the commercial venture that is periodically operated out of the lower rental unit, I find that I do not have jurisdiction over that claim. I therefore dismiss the Tenant's claim for \$150.00 for the cost of this inspection.

I find that the Tenant's Application for Dispute Resolution has been without merit and I therefore dismiss her claim to recover the cost of filing this Application.

In dismissing the claim to recover the filing fee, I note that the Tenant did not need to file an Application for Dispute Resolution to recover an overpayment of a security deposit. Section 19(2) of the *Act* authorizes a Tenant to recover a security deposit overpayment by simply deducting it from the rent.

Conclusion

The Tenant has not established a monetary claim.

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

