



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNDC, ERP, MNR, RR, O, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to force the landlord to do emergency repairs, a monetary order for expenses incurred by the tenant and a rent reduction for repairs and services agreed-upon but not provided.

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. The parties were permitted to present affirmed oral testimony and to make submissions during the hearing. All of the relevant evidence that was properly served will be considered.

Preliminary Matter

The tenant had submitted evidence to Residential Tenancy Branch by fax in support of the monetary claims. This evidence arrived the day before the hearing.

The Residential Tenancy Rules of Procedure, Rule 3.14, requires all evidence that an applicant intends on relying upon, that has not been submitted at the time the application is made, must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing date..

Instructional information and other relevant data is contained in the application material given to each applicant and served on each respondent which also states that evidence, upon which the applicant intends to rely, must be served both to Residential Tenancy Branch and the other party.

Given the above, I find I must decline to consider the late evidentiary material that the tenant submitted just prior to the hearing. However the tenant gave verbal testimony and the landlord was permitted an opportunity to respond. The landlord's evidence package arrived within the deadline and was accepted.

Issues to be Decided

Is the tenant entitled to an order against the landlord for repairs, compensation and a rent abatement for devalued tenancy?

Background and Evidence

The tenancy began on June 21, 2014 and current adjusted rent is \$855.00 per month. A security deposit of \$528.50 was paid.

The tenant testified that after she moved in, she found that the rental unit gave off a repulsive odour of “third-hand smoke”. The tenant testified that she was not able to tolerate this and had to leave on June 22, 2014 and remained out of the home for 16 days. The tenant is claiming compensation of \$456.00.

The landlord disagrees with the tenant’s claim. The landlord stated that the tenant had not expressed any concerns during the move-in condition inspection. The landlord testified that the walls of the unit were cleaned, primed and painted with two coats of paint at the start of the tenancy. Further to that, according to the landlord, they repainted areas with another two coats and replaced the carpets at the tenant’s request.

The landlord pointed out that the complex is not a non-smoking residence and they had no means to prevent the unit from being exposed to tobacco. The landlord stated that the tenant’s practice of closing up all of the rooms and not airing them out, despite being advised to do so by the landlord, made the situation worse.

The tenant argued that it is likely that the walls had not been cleaned before the landlord sealed in the smoke contamination with multiple coats of paint.

The landlord stated that they have done everything within their power to accommodate the tenant and deal with her concerns. The landlord pointed out that none of their apartments in the complex were designated as nonsmoking and if a tenant has a specific intolerance for the smell of nicotine or a reaction to residual smoke, the tenant should seek to be housed in a non-smoking complex.

In regard to the tenant’s other monetary claims, the tenant stated that she has spent a substantial amount of money and time dealing with the issues in the unit and feels entitled to be compensated. The tenant acknowledged that she failed to submit any copies of the receipts or invoices for the claimed expenditures.

Analysis

An Applicant’s right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations

or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss 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 amount to compensate for the claimed loss or 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.

With respect to the tenant's application seeking compensation, I find that the tenant's evidence did not satisfy any of the above elements of the test for damages. I find that the tenant has not sufficiently proven that the landlord was in breach of the Act or agreement. Accordingly I find that the tenant is not entitled to any rent abatement during their tenancy.

Based on the testimony and evidence I hereby dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant is not successful in the application their claim for monetary compensation is dismissed without leave.

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: September 09, 2014

Residential Tenancy Branch

