Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC RP RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on August 13, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to obtain Orders to have the Landlord comply with the Act, regulation or tenancy agreement, make repairs to the unit site or property; allow the Tenant reduced rent for services, facilities or repairs agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by 3 Agents for the Landlord and the Tenant. The parties gave affirmed testimony and confirmed receipt of evidence served by the other. 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.

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

1. Has the Tenant proven entitlement to a Monetary Order?
2. Should the Tenant be granted an Order to end this tenancy November 15, 2014?

Background and Evidence

The Tenant testified that he has only dealt with the Assistant Building Manager, (hereinafter referred to as Assistant), regarding his tenancy, and he has never dealt with the Resident Manager. He submitted that the Assistant showed him the apartment sometime in June 2014 and at that time the apartment was occupied. He completed the paper work, paid the security deposit and signed the tenancy agreement, with the

Assistant, prior to moving in on June 30, 2014. The Tenant questioned why the tenancy agreement and move in condition report were dated July 1, 2014.

The Tenant argued that there was no inspection completed so wondered how his signature appeared on that form. The Tenant submitted that the information pertaining to the end of the tenancy was added after he signed the tenancy agreement and argued that he had agreed to enter into a month to month tenancy not a fixed term. He noted that he was not provided copies of the tenancy agreement until he asked for copies of them in early August 2014, in preparation for this dispute.

The Tenant submitted that he was given the keys to the rental unit by the Landlord's cleaner, around 10:30 p.m. on June 30, 2014, at which time he began moving in his possessions. He noted that July 1, 2014 was a holiday and argued that neither the Assistant nor the Resident Building Manager attended his unit to conduct a move-in inspection on that date or any other date.

The Tenant provided testimony, in addition to his written statement, that indicated the rental unit was not clean and was not in new like condition as promised by the Assistant, when he arrived on June 30, 2014. He argued that when he first looked at the unit he was told the unit would be completely renovated and that he would have a new bathroom, new appliances, and new flooring. When he arrived the unit needed cleaning, required repairs, had red ants, silver fish, and although it had a new bathtub and new carpet; the toilet, bathroom sink, and appliances were not new, as previously promised.

The Tenant testified that he spent over six hours cleaning his rental unit when he first moved into the unit and that he told the Assistant of the required repairs. He said that when the Landlord failed to repair the unit he put his repair requests in writing on August 1, 2014, as per the copy of the list of required repairs that was provided in his evidence. Then on August 7, 2014 he received a notice of entry that indicated the Landlord was going to have his unit treated by the pest control company on August 8, 2014. He worked several hours to prepare his unit for treatment and on August 8, 2014 he saw the Assistant with the pest control person in the hallway and asked them to come into his unit at that time. They entered his unit and later told the Tenant that they had decided not to treat his unit that day, leaving him to continue to have to deal with the ants, fleas, and silverfish.

The Tenant submitted evidence that supported his statement that when the Landlord failed to return with the pest control company, the Tenant arranged for pest control treatment on August 15, 2014, at a cost to the Tenant of $168.00. The Tenant submitted evidence that he stayed in a hotel that evening at a cost of $171.35; and that he had to pay $41.95 to have his comforter dry cleaned as part of the final steps of pest control treatment to his rental unit.

The Tenant argued that this situation has caused him considerable stress, to the point where he feels like bugs are constantly crawling on him each time he enters the unit. He

submitted that he has lost all enjoyment of being inside his home and spends as much time away from home so he is not reminded of this situation. As a result, on September 30, 2014, the Tenant served the Landlord notice to end his tenancy effective November 15, 2014, and is now seeking monetary compensation for the money and time he has spent readying the rental unit, for misrepresentation, and for the stress of dealing with being bitten by the bugs.

The Assistant testified and initially stated that he recalled showing the Tenant the rental unit while the previous tenant was still occupying the unit. He said they left the unit and in the hallway he told the Tenant the rental unit would be "completely replaced" and later stated it would be "completely renovated" and that the unit would get "new carpet, underlay, and a bathtub". The Assistant said he could not recall the exact date in June 2014 when the Tenant signed the papers but he recalled only meeting the Tenant once.

The Assistant acknowledged that all of the papers were signed at one meeting which included "all the tenancy papers" and the application for hydro. During the Assistant's testimony I could hear the Building Manager leading and guiding the Assistant on what to say and then the Assistant changed his testimony to say he met with the Tenant twice, once on June 2, 2014 to show him the unit and sign the application to rent and a second time when he came back towards the third week of June 2014, which is when the Tenant paid the security deposit and signed the tenancy and hydro papers. The Assistant confirmed that he did not complete the condition inspection report form while walking through the unit with the Tenant.

The Building Manager testified and confirmed that she had never dealt with the Tenant directly. She confirmed that she did not have firsthand knowledge of what transpired during the meetings between the Assistant and Tenant because she was not present. When I instructed the Building Manager not to lead the Assistant's testimony she argued that she was assisting him with what to say because "she knows how this works". I advised the Building Manager that from that point forward I would only hear her testimony which related to her firsthand knowledge.

The Assistant confirmed that he did not attend the rental unit on July 1, 2014 to conduct the inspection because it was a holiday; however, he claimed that he attended the unit on July 2, 2014 but that the Tenant refused to have the inspection that day because the Tenant had boxes in the living room. The Assistant stated that he returned and conducted the inspection on July 7, 2014 by himself.

The Building Manager initially testified that she prepared, signed, and dated the tenancy forms before giving them to the Assistant to have the Tenant sign them. She submitted that the Assistant was told that the Landlord had decided to "renovate and replace everything" including the tub, carpet and linoleum, which is what they had done. She argued that they ran into problems installing the tub so the final cleaning was delayed, as was the final installation of the closet doors. She stated that they accommodated the Tenant so that he could move into the unit late on June 30, 2014 and that is why the cleaning was not completed. After I rephrased her testimony the Building Manager

changed her submission to say she did not fill out anything on the tenancy agreement prior to giving it to the Assistant and that she signed and dated the forms when they were returned to her.

The Assistant testified and confirmed that he attended the rental unit on August 8, 2014 with the pest control technician and that it was the technician who decided he did not want to complete the treatment because he did not want to move the furniture away from the walls. The Assistant argued that they were waiting for the technician to be available and that is why they did not make an attempt to treat the unit until August 19, 2014.

During the course of this proceeding the Property Manager did not provide testimony other than to say she had the authority to enter into a settlement agreement. At this point the parties entered into a discussion to try and settle these matters; however, the parties were too far apart and requested that I make an arbitrated decision.

Analysis

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

It was undisputed that at the time the unit was shown to the Tenant, the Assistant told the Tenant the unit would be “completely replaced” or “completely renovated”. The Building Manager confirmed that the Assistant was told the Landlord had decided to “renovate and replace everything” including the tub, carpet and linoleum.

In this circumstance, I find that the tenant offered to rent the unit on the condition that it would be completely renovated and clean, with a new bathroom tub, sink, toilet, new flooring and new appliances. Based on the foregoing, I accept the Tenant’s submission that the Landlord’s promise to renovate was a condition precedent to the start of the tenancy agreement.

It was not contemplated that the Tenant would move in and live in a unit infested with red ants, silver fish, fleas, requiring cleaning and repairs and without a new toilet, sink, and appliances. Furthermore, the Tenant did not contemplate having to conduct cleaning, preparation for pest control, and paying to have the pest control treatments completed. There is a significant difference between an agreement that the rental unit would be “completely renovated” before move in and later changing it to having a new tub, carpet, underlay, linoleum and leaving it dirty and infested with ants, silver fish and fleas. I consider it unlikely that there was any confusion about what the Tenant expected after what he was told by the Assistant.

I find the Landlord failed to satisfy the condition precedent to the tenancy agreement and failed to correct the situation within a reasonable time, after the Tenant informed them of the need for repairs and pest control. The Tenant followed up his request for

repairs, in writing, on August 1, 2014. I do not accept that it was a mere coincidence that the pest control technician attended the rental unit August 19, 2014, five days after the Tenant filed his application for Dispute Resolution, or that the delay was simply because that is when the technician was available.

The *Residential Tenancy Act* defines a "**tenancy agreement**" as 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.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

In this case, I find the Landlord's business practices of adding information by a third party after the Tenant signed the agreement, and their practice of postdating signatures to a legal tenancy agreement and having the Tenant sign the condition inspection report prior to the completion of the actual inspection, to be lacking, unethical, and makes the written tenancy agreement unenforceable.

Based on the above, I find that the parties entered into a verbal tenancy agreement for a month to month tenancy that began on July 1, 2014, for the monthly rent of $1,000.00, requiring a payment of a security deposit of $500.00, and included a material term that the unit was to be completely renovated and cleaned prior to the start of the tenancy. Section 45(3) of the Act provides that if a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

On September 30, 2014, the Tenant served the Landlord notice to end his tenancy effective November 15, 2014. Accordingly, I hereby order this tenancy to end on November 15, 2014.

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.

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.

Residential Tenancy Policy Guideline # 6 provides that the Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

On application, an arbitrator may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such

I find that the Tenant relied on the representations made by the Landlord's Agent that the unit would be completely renovated and "new" before the Tenant moved in and this led them to enter into the tenancy agreement. The Tenant had paid a security deposit to the Landlord and was ready, willing and able to perform under the tenancy agreement. The same could not be said of the Landlord here, as the evidence supports that the rental unit had not been completely renovated and was not properly cleaned or repaired prior to the Tenant taking possession.

In consideration of the foregoing, I find that the Tenant suffered a loss of quiet enjoyment, aggravated damages and financial losses as a result of the Landlord's failure to comply with the condition precedent.

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.

Accordingly, I award the Tenant monetary compensation in the amount of **$2,531.30** which his comprised of $1,000.00 for loss of quiet enjoyment, $1,000.00 aggravated damages, and $531.00 for reimbursement of costs incurred to ready the unit for occupation.

The Tenant will remain in the possession of the rental unit until November 15, 2014 and therefore will be required to pay the Landlord for two weeks occupation. Accordingly, I hereby order the monetary award be reduced by $500.00 and that $500.00 will be considered as full payment for occupation and/or rent for the period of November 1 – 15, 2014. **For clarity the Tenant is ordered to NOT pay the Landlord any money for November 2014 rent and the Tenant is to return possession of the rental unit to the Landlord on November 15, 2014.**

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

Conclusion

The Tenant has been issued a Monetary Order for **$2,081.30** ($2,531.30 - $500.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord 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.

The Landlord is hereby ordered to administer the Tenant's security deposit in accordance with section 38 of the Act, upon receipt of the Tenant's forwarding address.

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: October 14, 2014

Residential Tenancy Branch