



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a 1-Month Notice to End Tenancy for Cause dated September 16, 2014 and monetary compensation for loss of value to the tenancy.

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 make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

At the outset of the hearing, the tenant advised that they are no longer disputing the 1-Month Notice to End Tenancy for Cause. Although they initially disputed the Notice, which required them to vacate by October 31, 2014, the tenant stated that they decided to accept the end of the tenancy and are prepared to vacate the rental unit by tomorrow. The tenant stated that they will have it ready for the move-out condition inspection by November 15, 2014. The tenant pointed out that their rent for November has already been paid in full until the end of November and the tenant feels entitled to be reimbursed for the second half of the month.

I find that the tenancy is ending and therefore the portion of the tenant's application requesting that the Notice be cancelled is no longer at issue.

The hearing continued with respect to the remainder of the tenant's application in regard to the request for a retro-active rent abatement.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began on October 1, 2010. The rent was \$945.00 per month but had been increased to \$985.00 on October 1, 2012. A security deposit of \$472.50 was paid.

The tenant testified that the landlord had repaired her bathroom in October 2013 and in the process removed the tiles from around the bathtub, installing a sheet of plastic over the studs. The tenant submitted photographs of the area. The tenant testified that, despite repeated requests to finish the bathroom and restore the walls around the tub, the landlord left this job unfinished for over a year. According to the tenant, the landlord had scheduled the repairs on more than one occasion but the job was continually delayed. The tenant testified that the last time she requested that the bathroom repairs be finished, the landlord only responded to caution the tenant about the tenant's chickens and issued a 1-Month Notice to End Tenancy for Cause.

The landlord acknowledged that the tub surround was left unfinished for a year, but pointed out that this was not an emergency repair and the tenant's shower was still functional. The landlord stated that the tenant is responsible for the delays as she had insisted that a representative be present during the work and the arrangements kept falling through due to the tenant's agent not being available or failing to show up at the appointed time.

The landlord also pointed out that fixing the tenant's shower would require that the water be turned off for the entire building, which required coordination and advance notifications to be served.

The landlord feels that the tenant is not validly entitled to a rent abatement for the deficient bathroom refinishing.

Analysis

In regard to the tenant's monetary claim, I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence 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.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

I find that, although the landlord did not intentionally restrict the shower usage, there was a contractual obligation to provide a functioning bathroom, including a finished shower/tub wall as the tenant had rented a unit featuring this as part of the tenancy and there is an expectation that a finished bathroom be on site..

I also find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that this responsibility would include proper finishes in the bathroom that meet the local building codes and which function to maintain health and hygiene.

I find that the tenant's claim meets all elements of the above test for damages. The tenant was without a completed bathroom for an extended period of time and I find that the absence of this convenience did affect the value of the tenancy.

I do not accept the landlord's testimony that they were thwarted from complying with the Act by the tenant's alleged refusal to cooperate. I find that, even if the tenant could not manage to be present or have another person there, the landlord was still obligated under the Act to go ahead and complete the job without undue delay. I also reject the landlord's argument that the work was delayed by the necessity of having to shut off all of the water to every rental unit in the complex to re-tile the shower area.

Based on the evidence and on a balance of probabilities, I find that the tenant is entitled to compensation in the form of a retro-active rent abatement in the amount of \$50.00 per month from October 2013 to November 2013, a period of 14 months.

Based on the testimony and evidence discussed above, I hereby grant the tenant a monetary order for \$750.00 comprised of \$700.00 for the fourteen month period that the bathroom was undergoing repairs and the \$50.00 cost of this application.

. This order must be served on the landlord and may be enforced through B.C. Small Claims Court if necessary.

Conclusion

The tenant is successful in the application and is granted a monetary order representing a retro-active rent abatement. The portion of the tenant's application seeking to cancel the 1-Month Notice to End Tenancy for Cause is moot as the tenant is in the process of vacating the unit.

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: November 12, 2014

Residential Tenancy Branch

