Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, O

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order permitting her to reduce her rent. Both parties participated in the conference call hearing. C.H., the wife of the married landlords, represented both landlords and where I refer to "landlord" in the singular, it is C.H. to whom I refer. Where I refer to the husband, I use his initials, A.H.

Issues to be Decided

Is the tenant entitled to monetary compensation as claimed?
Is the tenant entitled to a rent reduction as claimed?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2013 and that the rental unit is on the lower floor of a home in which the upper floor is occupied by other tenants. They further agreed that monthly rent is set at $770.00 per month. They further agreed that on December 1, 2014, new occupants moved into the upper unit.

The tenant, who lives in the lower unit with her teenaged daughter, testified that hot water supply was an issue from the beginning of the tenancy, but when the 4 new occupants moved in upstairs, it dramatically affected the hot water which was available for her use. She stated that most days she did not hot water available and provided evidence that she emailed the landlords about the issue on December 11 and 12. The tenant claimed that she emailed the landlords on December 1, 3 and 6 but did not provide copies of those emails. The landlords acknowledged having received complaints beginning December 11 but denied having received complaints earlier than that. On December 13, the landlords installed an eco shower head in the upper bathroom which decreased the water output from that shower. The tenant testified that

this did not change the situation as hot water remained in short supply. The landlords testified that they also disconnected the hot water supply to the washing machine used by the upper occupants and turned up the heat on the hot water tank. The tenant testified that these measures did not have the desired effect and a lack of hot water continued to be an issue.

The landlord testified that they asked the tenant and the upper occupants to stagger their showers so the hot water tank had opportunity to refill. The tenant believed she should not have to arrange shower times in advance and was offended that the landlord asked her how many times she showered each day.

The tenant testified that on December 11, she noticed that the baseboard heater in the bathroom was not working. She advised the landlords via email that it required repair. The email exchanges submitted by the parties showed that on December 13, A.H. advised that he had stopped by to check on the heater when he attended the unit to speak with the upper occupants about the tenant's complaints, but as the tenant was not home at the time, he was unable to repair the heater. Further emails followed in which the parties negotiated a time for the landlord to attend to repair the heater.

The parties agreed that on December 19, they made arrangements for the landlords to attend the rental unit to inspect the baseboard heaters. The parties submitted into evidence an email exchange in which the tenant asked A.H. to attend at the unit on December 19 at 4:00 p.m. and asked whether 4:30 would be better. The landlord testified that A.H. understood that he was to arrive between 4:00 and 4:30 and although the tenant was not at the unit, her daughter granted admittance. The landlord testified that her husband told her that upon being admitted to the unit, he inspected the hot water tank and each of the 3 baseboard heaters and then left the unit after resetting the breaker for the bathroom heater, which was the reason it had not been functioning.

The tenant testified that her daughter said she did not admit A.H. into the unit, but that he simply followed her into the unit when she entered. The tenant's daughter did not appear at the hearing to provide testimony.

The parties agreed that the bathroom heater functioned properly after A.H. reset the breaker on December 19.

The tenant testified that when she learned that A.H. had entered the unit on December 19, she telephoned the RCMP to report the landlord and that she also telephoned the principal of the middle school at which A.H. teaches to report that he had been alone in the rental unit with her 15 year old daughter. The tenant did not allege that A.H. acted

in any way inappropriately, but suggested that merely being in the unit with her daughter unsupervised was illegal or wrong in some way.

The tenant testified that in the early hours of December 12 she was disturbed by a police officer who asked for one of the occupants who resided upstairs. The tenant wrote an email complaining to the landlord and also complained that there were several teens smoking marijuana outside of the rental unit. On December 13, A.H. spoke with the upper occupants and learned that the occupant whom the police had sought was on a curfew and that the officer who disturbed the tenant had simply knocked on the wrong door. A.H. emailed the tenant to advise her of what he had learned and also wrote that he had spoken with the upper occupants and asked them not to smoke marijuana on the property or allow teens to “hang out” on the residential property.

The tenant testified that on December 19, the upper occupants had 4 guests visit who stayed at the unit until mid-January. The guests placed an additional strain on the hot water supply and the tenant testified that there was rarely any hot water available during the period in which the guests were resident.

On December 22, the tenant issued the landlords a demand letter in which she complained about the allegedly illegal entry and asked for their agreement in writing for her to recover $597.93 of her rent for the month of December in compensation for loss of services and loss of quiet enjoyment. The landlords replied and refused to compensate her, outlining the steps they had taken to address her complaint.

The tenant testified that she was disturbed by the upper occupants on a number of occasions. She stated that she caught them smoking marijuana on the property on a several times and also summoned the police at least twice with noise complaints. The tenant emailed the landlord repeated complaints about the behaviour of the upper occupants. The parties submitted an emailed response by A.H. written on January 8 in which he advised that he contacted the RCMP about one of the occasions on which the tenant had summoned them and was advised that the disturbance had occurred on the road rather than on the residential property. The tenant did not provide copies of police reports. The tenant further testified that the upper occupants often threw cigarette butts into her yard, about which she also complained to the landlord.

The tenant further testified that while the upper occupants’ guests were in the residence, there was a child screaming continuously from 8:00 a.m. to as late as 11:00 p.m. In addition, the upper occupants frequently played loud music and stomped on the floor.

The tenant testified that the noise level and lack of hot water was so extreme that she and her daughter stayed elsewhere for 5 days and 4 nights in January.

The tenant kept a record of the dates in which she did not have hot water and in the month of December, it was at least once each day, usually between 9:30 and 11:30 a.m. The landlord testified that the hot water tank is a 50 gallon tank whereas the tenant claimed that according to a sticker on the side of the tank, which is located in the rental unit, it is a 38.5 imperial gallon tank which converts to 46.3 US gallons. The tenant provided information from BC Hydro which stated that a 50 US gallon hot water tank is sufficient to service a family of 2 with one bathroom and a washing machine but no dishwasher. The same BC Hydro chart indicates that a tank which is a minimum of 80 US gallons is sufficient for 4 people and 140 gallons is sufficient for 6 people. The tenant argued that because there are 4 occupants upstairs and 2 downstairs, a 140 gallon tank is the appropriate size. The landlords took the position that because the suite is legal and meets the building code, the hot water tank must be sufficient to meet the hot water needs of the residents.

The tenant seeks a monetary order compensating her for loss of hot water from September – present, compensation for having been without heat in the bathroom for 8 days and compensation for loss of quiet enjoyment due to the noise emanating from the upstairs occupants, the disturbance caused by their smoking and the loss of quiet enjoyment she alleges to have suffered as a result of A.H. having attended the unit on December 19.

Analysis

In order to prove her claim for compensation, the tenant must prove on the balance of probabilities that the landlords contravened the Act or tenancy agreement, that a loss resulted from that breach, proof of the value of the loss and proof that the tenant acted reasonably to mitigate her losses. Because the landlords do not live in the rental unit or on the residential property and cannot reasonably be expected to be aware of difficulties unless they are informed of issues by the tenant, the tenant is also obligated to provide the landlords with information about what breaches they believe to have occurred.

First addressing the tenant's claim for compensation for lack of hot water, the tenant provided no proof that she informed the landlords about any issues with hot water supply arising prior to December 11, 2014. Although she claimed to have emailed the landlords as early as December 3, she provided no evidence to corroborate that claim and she provided no evidence whatsoever to prove that the complained prior to December. Further, in an email dated December 16, she told the landlords that the hot water supply was inadequate "since December 1st," which suggests that there was not a

problem prior to the time the new occupants moved in upstairs. I find that the landlords were unaware of any problems with the hot water supply until December 11 and I therefore dismiss the tenant's claim for compensation for the period prior to December 11.

The tenant has provided significant and persuasive evidence showing that the hot water supply available to her is inadequate to meet her needs. She consistently complained about not having hot water in the mornings, although it is questionable whether that lack of hot water continued in the evenings. The tenant kept a careful record of when she lacked hot water in the month of December and her record shows that from December 1-11 she never had hot water in the morning and on 6 of those days, she did not have hot water in the evening. Yet in an email dated December 12, the tenant stated that "in the afternoon there seems to be hot water and yet in the mornings there is not". When on almost half of those dates she recorded that no hot water was available in the evening, it is inconsistent that she would not mention this to the landlords but would only address the lack she experienced in the mornings and state that it was fine in the afternoon. I find that the record is somewhat unreliable as it pertains to times other than the mornings. I find that the tenant experienced a lack of hot water in every morning in December and I accept her verbal testimony that this continued until the upper occupants' guests left in January. The tenant further testified that she has continued to experience a lack of hot water, although not to such an extreme as was experienced when the upper occupants' guests were in residence. As the tenant's complaints began when the upper occupants moved in and before their guests arrived, I find it completely credible that the same problem has continued. I find that the tenant has established that there is insufficient hot water in the mornings.

I accept that the rental unit complies with the building code as the suite is legal. However, this does not ensure there is adequate hot water for the number of occupants using the hot water tank. I find the tenant's evidence about the required size of a hot water tank to accommodate the needs of 6 people to be persuasive and I find that the hot water tank is of an insufficient size for this number of people. While the landlords have attempted to resolve the problem by installing a low flow shower head, turning up the temperature on the tank and disconnecting the hot water supply from the washing machine, these measures were clearly not effective. The tenant lives in moderately high density housing and some lack of hot water is to be expected when several units are sharing a hot water tank, but I find that not having hot water every morning goes beyond what may be characterized as intermittent high usage times. I find that the landlords are obligated under the terms of the tenancy agreement to provide hot water to the tenant on a regular basis and that they have been unable to do so since December 11, 2014. I find that this situation is likely to continue as long as the same

number of people occupy the upper unit. I find that the tenant has proven that the landlords breached their obligations under the tenancy agreement and that she suffered a loss as a result. I find that there was little the tenant could do in the circumstances to minimize her losses.

As for proving the value of her loss, the tenant provided a mathematical calculation to determine her entitlement which was based on the total hydro bill, the portion of the bill she believed could be attributed to the hot water tank and the percentage of her hot water entitlement which she felt she was able to access. I am uncertain that this calculation is accurate and as these types of awards are by necessity somewhat arbitrary, I find it more appropriate to fix a reasonable amount to which the tenant is entitled when she does not receive an adequate hot water supply. Her claim is for $29.83 per month for a two month period. I find that for a one month period, while the guests of the upper occupants were in the residence, the tenant had little hot water available and when the guests left, she has more hot water available. For the one month period in which the guests were in residence, I find that the tenant is entitled to recover $25.00 to reflect the lack of hot water. For the beginning of December and the remainder of January and February, I find that the tenant is entitled to recover $15.00 per month to reflect that she has only a moderate amount of hot water available. I therefore award the tenant a total of $55.00 for her loss of hot water up through the end of February 2015.

As I expect that the hot water issue will continue as long as the upper occupants remain in the upper unit, I find that the tenant is entitled to reduce her rent by $15.00 per month for each month in which they remain in the unit. When their tenancy ends and new occupants move in, the rental reduction will cease. The tenant at that point is welcome to keep a record of hot water availability for the first month of the new tenancy and provide that record to the landlord so they can negotiate a rent reduction if required. If the parties are unable to agree on whether a future reduction is required when new occupants reside in the upper unit or on the amount of that deduction, the tenant is free to apply for a further rent reduction. The landlords are always free to install a larger hot water tank to meet the needs of the occupants and should they do so, the tenant's rent reduction will cease. Should the landlord install a new hot water tank, the tenant's rent will revert to the full amount for the first rental payment due after the new tank is installed and should there be future problems, the tenant is free to file another application for a rent reduction.

I find that the tenant informed the landlord about the lack of heat in the bathroom on December 11 and I find that the problem was resolved on December 19. There were email exchanges between the parties in the intervening times in which the landlord

sought to arrange a time to attend the unit and for that reason, I find that the landlords did not breach their obligation under the Act to keep the unit in good repair as I find they acted within a reasonable timeframe to resolve the problem. I therefore dismiss the claim for compensation for lack of heat.

The tenant claimed that when the upper occupants had guests in the upper suite, they created an unreasonable amount of noise. She claimed that a small child cried continuously from 8:00 a.m. to at least 10:00 p.m., but her own audio evidence shows that the crying was intermittent at best. The tenant claimed that on 4 occasions she caught the upper tenants or their guests smoking marijuana on the property. The tenancy agreement provides that there is no smoking in the tenant's rental unit but does not guarantee that the entire residential property will be smoke free. The tenant testified that she had to telephone the police on 2 occasions due to noise violations from the upper occupants. One of A.H.'s emails shows that when he contacted the RCMP, he learned that one of the disturbances actually took place off the residential property, which is outside of the landlord's control. The fact that the police mistakenly knocked on the tenant's door when they were looking for one of the other occupants is outside the landlord's control as it was the police rather than the landlord who made that mistake. The tenant claimed that the guests of the upper occupants caused continual loud music and stomping but her December 27 email to the landlords she stated that she asked them to turn down the music and that this was "effective for a week or so". The tenant also claimed to be away from the rental unit for 5 days in January, which means that because the guests were only in the residence for one month, there was just over 2 weeks of what the tenant described as unbearable noise. The tenant's audio evidence shows that there was noise and music emanating from the upper suite, but I am unable to determine from that evidence that the noise was beyond what would be considered reasonable in moderately high density housing. Freedom from unreasonable disturbance is guaranteed by the Act, but given the fact that the tenant lives on a floor beneath another occupied unit, some noise transfer must be expected and I am not persuaded that the disturbance described by the tenant goes beyond what would be considered reasonable in the circumstances. I therefore dismiss the claim for compensation for loss of quiet enjoyment due to disturbances from the upper occupants and their guests.

With respect to the tenant's allegation that the male landlord illegally entered the rental unit on December 19, section 29 of the Act permits a landlord to enter a unit without notice when he is granted permission at the time he arrives at the unit. The tenant did not present her daughter to provide witness testimony and as the parties seem to have had a reasonably good relationship throughout the tenancy, I find it more likely than not that the daughter permitted entry at the time the landlord arrived. I find the tenant's

allegations that the male landlord acted inappropriately by being in the rental unit with her teenaged daughter to be not only unfounded, but spiteful and a direct assault on the landlord's reputation. The fact that the tenant telephoned the police and the landlord's employer to report his behaviour when (a) she knew that the male landlord did not behave inappropriately toward her daughter in any respect whatsoever and (b) the landlord attended the unit at her invitation and restricted his inspection of the unit to the issues she had brought to his attention suggests to me that the tenant was acting out of malice. I find that the male landlord's actions with respect to entry of the rental unit were in full compliance with his obligations under the Act and I find that the tenant is not entitled to any compensation resulting from this occurrence.

I note that the tenant has threatened that her daughter has been instructed to telephone the police should the male landlord "turn up unannounced". I remind the tenant that the landlords are entitled to attend at the rental unit and may request permission to enter at the time they attend or may provide 24 hours written notice of entry and enter the unit regardless of whether the tenant is present. The landlords are also entitled to enter the unit without any notice whatsoever should an emergency exist and entry be required to protect life or property. Should the tenant or her daughter summon the police or otherwise interfere with the landlords' exercise of their lawful rights, this may provide grounds to the landlords to end the tenancy for cause.

Conclusion

The tenant has been awarded compensation in the amount of $55.00 for loss of hot water up through the end of February. She may deduct $55.00 from a future rental payment. Her rent will be reduced by $15.00 per month until such time as the hot water issue is resolved as outlined above. The balance of the claim is dismissed.

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: February 20, 2015

Residential Tenancy Branch