



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RP, PSF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested the landlord be Ordered to make repairs to the rental unit and provide services or facilities required by law.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Must the landlord be Ordered to make repairs to the rental unit?

Must the landlord be Ordered to provide services or facilities required by law?

Preliminary Matters

This is the 2nd hearing held on the same file and same matters. The parties confirmed that they attended a hearing on February 5, 2015. A decision was not issued. The parties said this hearing was scheduled to allow the matters to be re-heard, as a decision was not issued after the initial hearing was concluded.

I explained that, in the absence of any written record of the previous hearing and the absence of a decision that this hearing would determine the outcome of the dispute. Any suggested agreements or findings made on February 5, 2015 are not recorded; therefore matters must be decided during this hearing.

The tenant confirmed receipt of the landlord's evidence, with the exception of the utility bills. The landlord confirmed receipt of the tenant's evidence submissions. Each party received copies of coloured photographs.

A copy of a February 2, 2015 10 day Notice to end tenancy for unpaid rent was submitted as evidence on February 2, 2015. This Notice was not part of the application before me but includes utility costs that are in dispute.

Background and Evidence

The tenancy commenced May 1, 2014; rent is \$782.00 per month. The parties signed a copy of the standard Residential Tenancy Branch (RTB) tenancy agreement. The copy of the tenancy agreement supplied by the tenant was not signed by the tenant; the landlord's copy was signed by both parties. The tenant confirmed he had signed the tenancy agreement.

Discussion took place in relation to the term of the tenancy agreement, hand-written on the contract that requires the tenant to keep his area of the yard clean. The parties agreed that the tenant should have exclusive use of the yard that is between the stairs and white shed.

The tenancy agreement set out facilities and services provided and included with the rent; utilities are not selected as included.

The tenant lives in the basement unit of the home; unit "B". The landlord has 2 other units in the home; "A" and "C".

The landlord supplied a copy of a shelter information form that was submitted to a government agency by the tenant. This form allowed the tenant to obtain the funding needed for monthly rent. The form included a declaration that utilities would be included with rent. The landlord said that she did not sign this form; although there is a signature at the bottom of the form for the landlord.

With the application, the tenant submitted a list of deficiencies and issues that he wished to address during the hearing. Those items included confirmation that a move-in condition inspection report was not completed, repairs are not being completed, and some issues could affect the tenant's personal safety. The tenant said that the landlord has been asking him to collect rent from other tenants, told him to remove his cat and has asked him to serve documents to other tenants.

The remaining issues in dispute are:

1. No ceiling in the bedroom closet. The closet has been in this state since the beginning of the tenancy. There is a piece of drywall tape hanging from the kitchen ceiling caused by a flood that occurred in the upper unit.
2. Snow removal is not being completed.
3. Surveillance cameras on the exterior of the building have not been removed. The tenant in the upper unit "A" has placed 8 security cameras on the outside of

the building. The tenant cannot leave or enter the building without being watched; his right to privacy and quiet enjoyment is being negatively impacted. The tenant smokes outside and a camera is pointed at the porch. One camera has a cable that passes over the walkway the tenant uses to leave the property and is so low the tenant has to duck. The tenant has a medical condition that affects his balance and this cable poses a risk and hazard to the tenant.

4. The tenant is being asked to pay utility costs that should be included in rent. The tenant acknowledged the tenancy agreement does not include utilities but since the start of the tenancy he has not paid this cost. In August 2014 his hydro was cut off; he called the landlord and within a very short period of time the service was reconnected. The tenant said that the electrical panel in his unit appears to be for unit "A" and that it does not operate the power in his unit. The electrical panel for the tenant's unit is in a different unit of the home. There are 2 hydro meters and 3 rental units. The tenant is not sure how the gas service is supplied or billed.

The tenant said the landlord told him about a bill that seemed excessive for a 600 to 700 sq. foot unit. The tenant is not convinced that the electrical panel attached to his unit runs power for his unit alone. The landlord paid for the utilities from May to August and then began to ask the tenant to pay. The tenant said that utility bills for a previous tenant had been arriving at the unit.

The landlord said that the first time she heard about the ceiling in the closet was when she received the hearing documents. The landlord agreed to look at the ceiling to assess the need for repair.

The landlord said that the security cameras belong to another occupant of the home and that she has talked to that person. The landlord was not sure if that person could be prohibited from installing the cameras.

The landlord has been paying the utility bills since the tenant moved in as the services were cut off after he failed to put them in his name. In August 2014 when the power was shut off the landlord agreed to place the utility in her name until the tenant could arrange payment for the services; the landlord was attempting to assist the tenant. The previous tenant had paid the bill.

The landlord said the initial utility bill she asked the tenant to pay was high as it included a sum that was overdue from the start of the tenancy. On January 10, 2015 the landlord gave the tenant a written note reminding him the utilities were not included and that the tenant had yet to place the utilities in his name and must immediately do so. The note also directed the tenant to remove his cat or face eviction.

There was no agreement on the utility meters and electrical panels in the home. The landlord said that 1 hydro meter services the other 2 units, jointly and that the 2nd hydro

meter services only the tenant's unit. Neither party provided any information on the numbers of gas meters that are installed at the home.

Discussion took place in relation to problems such as the occupant of an upper unit allowing his dog to defecate in the tenant's yard area. The landlord has made the occupant clean up the yard, but he has not cleaned the feces from the tenant's area. The landlord understands that she needs to speak with the occupant and the tenant understands he must inform the landlord of concerns that he has. The parties were encouraged to communicate in writing and to keep a copy of all written communication.

The parties each submitted photographs of areas of the rental unit and yard. Security cameras and wires; some drywall tape pulled away from a ceiling area; a; snow covered yard and steps and an overgrown yard could be seen. The landlord's photographs show a unit that appears to be in a good state of repair.

Analysis

I have considered RTB policy and the legislation, in response to the concerns raised by the tenant.

During the hearing I established that the tenant is not required to act as agent, by delivering notices or collecting rent for the landlord, unless he agrees to do so.

I find the direction to remove the tenant's cat is of no force. The only mention of pets in the tenancy agreement is clause 5, which references any term that might prohibit a pet; the agreement is devoid of such a term.

I explained that section 23 of the Act requires the landlord to arrange a condition inspection at the start of the tenancy. A report, in the approved form, must be completed, signed by both parties and a copy given to the tenant. The parties walked through the unit but a report was not completed. The absence of a report may affect the disbursement of the security deposit at the end of the tenancy and any claim for damage. The landlord was encouraged to learn more about her obligations.

RTB policy #1 suggests that in a multi-unit dwelling the landlord is responsible for snow removal. Therefore, I find that the landlord must ensure that arrangements are made to remove snow from the access points between the front and back doors of the home and road each time any significant snowfall occurs.

The security cameras have been installed on the landlord's property; without her permission. The landlord was not sure of her right to direct the occupant to remove the cameras. The landlord should be aware that constant monitoring of the common areas of the home; the tenant's yard and the tenant when he is outside of the home could constitute a loss of privacy. Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Therefore, pursuant to section 62(3) of the Act, I Order the landlord to take the steps required to ensure the tenant's right to quiet enjoyment is not affected. Security cameras should only be installed when there is a legitimate reason to do so; taking into account privacy legislation. There was no evidence before me that the cameras would meet that test. Further, I find that the cable that crosses the tenant's point of egress must be immediately removed, in order to ensure the safety of the tenant.

In relation to payment of utilities, when there is a dispute in relation to a term of the tenancy agreement I find that the written contract takes precedence. Just as with the term relating to a pet; the tenancy agreement has equal force for utilities. Therefore, based on the tenancy agreement signed by the parties, I find that the tenant is responsible for paying utility costs. The shelter agreement signed by the parties did reflect inclusion of utilities; but the contract signed by the tenant did not. A shelter agreement does not confer a tenancy; only the signed contract, in this case, does.

I am not convinced that the hydro and gas utilities billed to the tenant's unit include the provision of service to other areas of the home, but there was sufficient confusion regarding the electrical panels, the number of meters and the provision of gas service that I find the utility services must be confirmed.

Before the tenant is required to pay the utility costs I have made the following Orders, pursuant to section 62(3) and 32 of the Act:

- The landlord must obtain a report from an authorized BC Hydro authority or electrician licenced to work in British Columbia, declaring that the electrical panel that runs to the tenant's unit and generates the bill for that unit provides power to the tenant's unit alone and does not provide power to other areas of the home;
- That a copy of the report obtained declaring the details of the hydro service to the tenant's unit be given to the tenant;
- That the landlord obtain a report issued by Fortis gas or a gasfitter licenced to work in British Columbia setting out the gas connection details, confirming gas service billed to the tenant's unit is for gas provided to that unit alone; and

- That a copy of the reports obtained declaring the details of the gas service to the tenant's unit be given to the tenant as soon as they are issued to the landlord.

The purpose of the reports is to provide proof that the utility services which the tenant must pay are connected and billed for his unit only. If the reports show that the services provided for hydro and gas are separate from the other 2 units in the building I find that the tenant must pay all utility arrears and immediately place the utilities in his name. The landlord is responsible for providing the tenant with the utility bills covering the period of time the tenant has lived in the unit.

Section 6(3) of the Act provides:

Enforcing rights and obligations of landlords and tenants

- 6** (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*
- (2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
- (3) *A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

If either of the utility services is found to be providing service to other parts of the home, outside of the tenant's unit, I find that the term requiring payment for that utility is then unenforceable. For example, if it is determined there is only a single natural gas meter and the gas bill issued for the tenant's unit includes usage by the other units; the tenant will not be required to pay the gas utility. If the hydro usage report shows that an exterior outlet is connected to the tenant's unit; I find this will not remove the tenant's obligation to pay hydro costs as use of an exterior outlet by the tenant would be reasonable.

The landlord was encouraged to inspect the rental unit to assess the need for any repairs. From the evidence before me I do not find there is evidence to support a repair order. The tenant rented the home with the closet in the current state; there was no evidence supplied that the closet is causing any issues that require a ceiling. The landlord may wish to trim the drywall tape that is hanging on the kitchen ceiling. There was no evidence before me that would support a repair Order pursuant to section 32 as any repair would be aesthetic in nature.

If the tenant experiences any concerns in relation to the other occupants of the home it was suggested he issue a written note to the landlord; and that he keep a copy of that

note. The tenant is not required or expected to ensure others comply with the Act; that is the responsibility of the landlord. If another occupant is allowing his dog to defecate in the area of the yard set aside for the tenant; the tenant should inform the landlord; who must then ensure the matter is addressed within a reasonable period of time.

Conclusion

Orders have been issued as set out above.

This decision is final and binding and 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: March 05, 2015

Residential Tenancy Branch

