Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, AS, O, OPR, MNR, MNSD, FF

Introduction

In the first application, by filing number, the tenant seeks to cancel a ten day Notice to End Tenancy dated March 5, 2014, an order permitting him to assign or sublet his apartment for the last half of March 2015 and for a monetary award for loss of use of his shower for a period of four days.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and for a monetary order for undisputedly unpaid March 2015 rent of $1145.00.

The tenant says the landlord should have permitted him to assign or sublet the premises for the period March 15 to 31, 2015 and so the landlord has failed to mitigate its loss.

The tenant vacated the premises in mid-March and so the question of the validity of the ten day Notice, the request for an order of possession and the request for authorization to assign or sublet the tenancy are moot. They no longer are at issue.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to compensation for inconvenience associated with a bathroom repair? Should the landlord have mitigated its loss by permitting an assignment or subletting of the premises for the last half of March?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in July 2012, initially for a fixed term and ultimately on a month to month basis. The rent was raised to $1145.00 commencing February 1, 2015. The landlord holds a $550.00 security deposit.

In February 2015 the tenant gave notice that he intended to vacate the premises by March 31, 2015. There is no issue about this notice. All agreed.

The tenant did not pay the $1145.00 rent due March 1, 2015

The tenant's circumstances allowed him to leave by mid-March and so in early March he ran advertisements to find a tenant to take over the last sixteen days of his tenancy and implored the landlord to find replacement tenants who could move in early.

By mid-March the tenant had found two possible replacement tenants to whom to assign the remainder of his monthly tenancy. From the evidence, it does not appear that the landlord was particularly receptive to having a replacement tenant for the remainder of March.

By March 12th, after showings, the landlord secured a new tenant for a fixed term of one year, commencing April 1, 2015 and at a monthly rent of $1200.00; $55.00 more than the tenant was paying.

As the tenant has left by mid-March, the landlord permitted the new tenancy early occupancy. Though the applicant tenant contests the move-in date, I find the new tenants moved in three days early. The landlord is prepared to credit the tenant $110.82 for that period.

After he had given his notice but before he moved out, the tenant gave his consent to the landlord having its workmen enter and carry out repair; a re-grouting of the bathroom tub/shower area. The work commenced March 5th.

The tenant says that the drywall dust created by the work was horrendous for days and threatened his health. He says it was so intense that it set of the smoke detector in the rental unit. He says that he could not use the shower for a day or more and that once the work was done, the faucet had been installed incorrectly, preventing any reasonable control of the hot and cold water. He says the faucet was not repaired until March 9th.

The landlord's representative Ms. J. testifies that the tenant approved the work taking place while he was still there and was without a shower for only 24 hours, to allow the grouting to set.

Analysis

The *Residential Tenancy Act* (the "*Act*") is clear regarding the question of assigning or subletting a month to month tenancy. Section 34 of the *Act* provides,

> **Assignment and subletting**
> **34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
> (2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).
> (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

A reasonable corollary of ss.(2) is that if a tenancy is other than for a fixed term for six months or more, the landlord may unreasonably withhold consent. That is a corollary identified by Residential Tenancy Policy Guideline 19 "Assignment and Sublet"

> A landlord is not required to give consent if not asked to do so. Once the request is made, the landlord's consent cannot be unreasonably or arbitrarily withheld if the tenancy agreement:
> - has a fixed term of 6 months or more, or
> - is in respect of a manufactured home site where the manufactured home and the site are not rented from the same landlord (although a landlord may require the request to be in the form set out in the Manufactured Home Park Tenancy Regulation).
>
> A landlord is not required to give consent to an assignment or sublet other than those specified.

As this tenancy was a month to month tenancy the landlord was under no obligation to consent to any assignment or subletting.

Even had there been an obligation on the landlord not to unreasonably withhold consent to the assignment or subletting of the tenant's month to month tenancy, in the circumstances of this case the landlord would have been entitled to refuse. The replacement tenant would possess the rental unit for perhaps fifteen or sixteen days. The landlord would be put to the task of checking references, preparing documentation and accounting for deposit money. Additional move-in and move-out condition inspections and reports would be demanded by any prudent landlord. The insertion of a new tenant for a very short time might impose additional risk that the landlord might not

reacquire possession of the unit for the time it had contracted to give to its new tenants on April 1, 2015.

The tenant points out that landlords and tenants are under a duty to mitigate their loss suffered as a result of the other's breach of the *Act* or the tenancy agreement. Section 7(2) of the *Act* states: "a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

I do not consider that the principle has any application in this case. The tenant was not breaching any law or the tenancy agreement. He had given his notice. The landlord's claim is fixed at the monthly rent of $1145.00 that became due from the tenant on March 1, 2015. While the tenant is claiming he should pay less of that unpaid amount because the landlord failed to mitigate its "loss," he would be making the equivalent claim had he paid the rent on March 1st when it came due. He'd be claiming a rebate. It is his "loss" not the landlord's. The tenant is arguing that the landlord should have accommodated him in his attempt to reduce his loss by doing something it was not in law or by the tenancy agreement obliged to do.

I find that the landlord is entitled to the entire rent for March less the admitted credit of $110.82: a remainder of $1034.18.

In regard to the bathroom repair, I find that the tenant was aware and consented to the fact that the shower would be unusable for a twenty four hour period to permit the tiling grout to set. He cannot now claim compensation for that inconvenience.

The tenant's evidence regarding the health hazard of "drywall dust" is not applicable to the facts here. There is no indication that any drywall work was done. The evidence indicates that the tiling was re-grouted.

I find that the dust emitted by the work was in excess of the "little bit of dust" the tenant was warned about. The tenant was obliged to clean up the dust and he is entitled to be compensated for that work. I award him $100.00 for the cleanup.

I find that the faucet apparatus for the tub/shower was incorrectly installed that from March 6th to March 9th, the tenant could only run water from the bathtub faucet on either hot or cold settings, without moderation. This would have made showering impossible but would only have been a minor inconvenience when filling the bathtub. On all the evidence I award the tenant $25.00 for the inconvenience.

Conclusion

The landlord is entitled to a monetary award of $1034.18 plus recovery of the $50.00 filing fee. I authorize the landlord to retain the $550.00 security deposit it holds, in reduction of the award.

The tenant is entitled to a monetary award of $125.00. He does not claim recovery of a filing fee.

The landlord will have a monetary order against the tenant for the difference of $409.18.

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: April 19, 2015

Residential Tenancy Branch