Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0987979 BC LTD & Dennison Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, OLC, PSF, FF, MND

Introduction

This hearing dealt with cross applications. The landlord has filed an application seeking a monetary order for damage to the unit, site or property and the recovery of their filing fee. The tenant has filed an application seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to have the landlord comply with the Act, regulation or tenancy agreement, an order to have the landlord make emergency repairs for health and safety reasons, an order to have the landlord make repairs to the unit, site or property, and an order to have the landlord provide services or facilities required by law, and the recovery of their filing fee.

Both parties participated in the conference call hearing. The tenant confirmed that he received the landlords' application, notice of hearing package and evidence in accordance with the Act and the Rules of Procedure by registered mail. The landlord advised that they received the tenants' application for Dispute Resolution and Notice of Hearing package by registered mail, but did not receive any evidence. The matter was discussed by both parties and the evidence the tenant wished to refer to were previous decisions from other Arbitrators which the landlord had copies of in their possession. The landlord did not require or request an adjournment to review those documents; on that basis the hearing proceeded and completed on this date. Both parties were given full opportunity to present their claim, ask questions and make arguments.

Issue to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background, Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, **each party must prove their own claim**. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenancy began on April 1, 1997 and ended on April 30, 2014. The tenants were obligated to pay $860.00 per month in rent in advance.

Firstly, I address the tenant's claims and my findings around each as follows.

Tenants First Claim – The tenant is seeking to have the landlord to comply with the Act, regulation or tenancy agreement, conduct repairs, conduct emergency repairs and to have the landlord provide services and facilities as required. As both parties have confirmed, the tenant vacated the property over a year ago. As the tenant no longer resides in this building, this portion of the tenants' application is now moot and I therefore dismiss this portion of the tenants' application.

Tenants Second Claim – The tenant is seeking a monetary order as compensation for $2430.00. The tenant stated that the landlord blocked off a fresh air inlet in the hallways which in turn has downgraded the air flow and air quality of the building. In addition, the tenant stated that at a previous hearing the landlord and tenant entered into an agreement that the landlord would upgrade the system. The tenant provided a formula to which the landlord did not comply with said agreement for 71 days along with the stress of dealing with this hearing, and came to the amount of $2430.00.

The landlord disputes this claim. The landlord stated that in the agreement, the landlord agreed to have a technician inspect the air flow system and would abide by their recommendation. The landlord stated that the report did not mention a new system was required or any upgrades. The landlord stated that the technician provided a quote for a new system as a matter of reference and as a point of upselling their services. The landlord stated that she adamantly disputes that any direction or order to upgrade the system was recommended or required. The landlord stated that they have complied fully with the agreement. The landlord stated that this is the fifth hearing between these two parties and that the air flow system only became a problem after she issued a notice to end tenancy to the tenant for unpaid rent. The landlord stated that the tenant claims are frivolous and a waste of time.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant **must satisfy all of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the tenants own evidence, I am satisfied that the landlord has complied with the said agreement and that the tenant has failed to provide sufficient evidence to support their claim. The tenant has failed to satisfy all four grounds as listed above and as required. This portion of the tenants' application is dismissed.

The tenant has not been successful in their application.

I address the landlords' claims and my findings as follows.

Landlords First Claim – The landlord is seeking $568.40 for the cost of replacing a refrigerator. The landlord stated that the refrigerator was so filthy that they could not salvage it and that a new one was required. The landlord stated that they were unsure as to the age of the refrigerator.

The tenant stated that he left the refrigerator clean. The tenant stated that the refrigerator wasn't new when he moved in and that it was never replaced during his 17 year tenancy.

Policy Guideline 40 addresses this issue as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. The guideline states that the useful life of a refrigerator is 15 years. The landlord wasn't able to provide evidence as to the age of the refrigerator nor was she able to dispute the tenants' testimony that it was at least 17 years old. The landlord was unable to dispute that the refrigerator had been in use beyond the "useful life" and therefore I must dismiss this portion of the landlords' application.

Landlords Second Claim – The landlord is seeking $125.00 for suite cleaning and $568.40 for garbage, refuse and miscellaneous items to be removed and taken to the dump. The landlord provided receipts and photos to support their claim.

The tenant stated that the unit was given to him in a very dirty state. The tenant stated that he left the unit clean and empty. The tenant stated that the photos relied upon by the landlords are not of his unit and that he's not sure where they are from.

A tenant is responsible for leaving their suite reasonably clean at the end of their tenancy as per the legislation. I accept the evidence submitted by the landlord and find that the landlord is entitled to $693.40.

The landlord is entitled to the recovery of the $50.00 filing fee.

It is worth noting, the tenant was continually making an argument about his security deposit. It was explained to the tenant **five** times that the landlord did not make an application in regards to the security deposit and that it was not before me. Each time that I explain that to the tenant he became more upset and would renew his argument.
At the conclusion of the hearing I advised the tenant a final time that this decision will address the items applied for by each party only.

Conclusion

The landlord has established a claim for $743.40. I grant the landlord an order under section 67 for the balance due of $743.40. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants application 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: May 12, 2015

Residential Tenancy Branch