Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, RP, LRE, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and a cross-application by the landlord for a monetary order and a cross-application by the tenant for a monetary order, an order compelling the landlord to perform repairs and an order setting restrictions on the landlord's right to enter the rental unit. Both parties participated in the conference call hearing.

At the hearing, the landlord's counsel insisted that the landlord had not filed an application for dispute resolution despite the fact that the tenant had received a copy of the landlord's application and the Residential Tenancy Branch (the "Branch") had a copy of the application. Counsel was under the impression that the issue had been dealt with in an earlier hearing which took place on December 9, 2014 (the "December Hearing"). However, the decision resulting from that hearing shows that the arbitrator in the December Hearing dealt solely with the tenant's application disputing a notice to end tenancy and did not address an application by the landlord.

I offered counsel the opportunity to speak privately with his client to seek instruction with respect to her application, but he refused. I then asked counsel whether I should consider the landlord's application to have been withdrawn and although he continued to insist that no such application existed, he eventually confirmed that if there was such an application, it was being withdrawn.

The hearing proceeded to deal exclusively with the tenant's claim.

The landlord acknowledged having received the tenant's evidence, but stated that because the photographs were photocopied in black and white, the images were unable to be seen. The tenant confirmed that he had provided the Branch with color photographs and had provided the landlord with photocopied photographs. I advised the tenant that I would not consider his photographs as the landlord had not had opportunity to view them.

The tenant originally sought a monetary award of over $36,000.00 but upon learning that the jurisdiction of the Branch was $25,000.00, he abandoned that part of his claim which was in excess of the Branch's jurisdiction.

The tenant made a claim for administrative penalties. At the hearing, I advised the tenant that I was not delegated authority by the Director of the Branch to award administrative penalties.

Should the tenant wish to pursue such penalties, he should address a complaint to the Director who may choose to investigate his claim. I note that any penalties which would be awarded would not be payable to the tenant, but to the Crown.

The tenant also made a claim for both aggravated and punitive damages. In *Lee v. Gao* (1992) 65 BCLR (2d) 294 (BCSC), the Court found that the Residential Tenancy Branch and administrative tribunals in general do not have the authority to award punitive damages. At the hearing, I advised the tenant of that caselaw and stated that I had the authority to consider the aggravated damages part of his claim but not the punitive damages claim. I offered the tenant the opportunity to withdraw his claim and proceed in the BC Supreme Court, but the tenant elected to proceed with his claim through the Branch.

The tenant provided a significant volume of evidence in support of his application. At the hearing, I asked the tenant to proceed through his claim systematically but the tenant asked instead to rely on a prepared statement. The landlord did not object to proceeding in this fashion. I gave the tenant several opportunities to expand on his statement, but he referred me to the written materials and chose not to provide further details.

Issues to be Decided

Should the landlord be ordered to perform repairs?
Should the landlord's ability to access the rental unit be restricted?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in September 2012 and that the tenant pays $900.00 in rent each month. The rental unit is an apartment in a multi-level building.

The tenant seeks an order restricting the landlord's right to enter the rental unit and in his written evidence, indicated that he felt it appropriate to prohibit 2 of the landlord's agents, SB and MB, from coming within 1 metre of the rental unit. The tenant's documentation states that these agents have caused him to lose quiet enjoyment of the rental unit by giving him improper notices of entry, entering to repair items which did not in the tenant's opinion require repair, illegally entering the unit when he had denied access and acting in an unprofessional and abusive manner when they encounter him. The tenant provided examples of written notices of entry. Each notice except for one gave a specific date and time of entry and with the exception of one notice, each gave a reason for entry. The tenant objected to the notices because they were not printed on letterhead, they were signed by the manager who did not indicate that she acted on behalf of the corporate landlord, indicated that a private contractor would be visiting without identifying the trade, company or professional credentials and on one occasion, referred to his balcony as a patio. The tenant objected to another occasion in which the landlord stated a time for entry but was almost 90 minutes late.

The tenant's narrative in his written evidence recounted an occasion on which the landlord had given written notice of entry, to which the tenant had replied that he would deny entry. He stated that he always uses the deadbolt and a chain on the door and while he was in the shower on the date specified in the notice, the landlord entered his unit and then left the door open and ajar. The tenant claimed that this caused him and his son concern for their safety. The tenant did not explain how, if he uses a chain on his door, the landlord could have opened the door.

The landlord did not directly respond to the tenant's claim for a restriction on the landlord's ability to access the unit except to argue that the claim was unfounded.

The tenant seeks an order compelling the landlord to perform repairs. The tenant claimed that in the December Hearing, the landlord agreed to install a bathtub enclosure with a glass door in his bathroom to prevent water from leaking on the floor when the shower was in use. He testified that the landlord installed what he described as a "partition" on the bathtub which inhibits his access to the tap in the bathtub. In his application, the tenant provided a list of other repairs which he believes are required.

The landlord's only response to the tenant's claim for repairs was to state that the tenant had not brought any of the requested repairs to the landlord's attention. The landlord stated that they have come repeatedly to perform other repairs which they believed to be required and on occasion, the tenant denied them access. The tenant claimed that he did not deny access but simply challenged repair persons who didn't have the credentials he believed were required to effect repairs. The tenant did not refute the landlord's claim that the tenant had not brought the need for other repairs to their attention. The landlord claimed that the partition of which the tenant had complained had resolved a problem with water splashing from the shower onto the bathroom floor and claimed that it served its intended purpose. The landlord denied having agreed to install a new bathtub enclosure with a glass door.

The tenant claims for compensation for the return of a payment made to the landlord, loss of quiet enjoyment, loss of utility of the bathroom, what he describes as a "defacto loss of tenancy" and aggravated damages.

The tenant's evidence shows that in 2013, the tenant agreed to pay $500.00 to the landlord as the cost of repairs required as a result of water leaking from the tenant's unit into the unit below. The tenant claimed that this payment was made in good faith with no admission of liability and now seeks to recover that payment as the leak and resultant damage was not his fault.

The tenant claims that he has lost quiet enjoyment of the unit as a result of the landlord having performed repairs which the tenant believes were unnecessary, having failed to perform repairs which the tenant believes are necessary, allowing repair persons into the unit of whose credentials the tenant does not approve and telephoning the police. The tenant argued that the landlord's agents are incompetent and that one of the agents suffers from cognitive deficits which have negatively impacted him. He claimed that on one occasion, the agent slammed a door in his face and has otherwise behaved unprofessionally and has repeatedly yelled at him.

The tenant claimed that his bathroom ceiling was not repaired in a timely manner after a flood occurred shortly after his tenancy began and that as a result he has lost full use and enjoyment of his bathroom.

The landlord responded to the tenants' monetary claim by stating that no one else in the building had issues with the way in which the agents managed the building.

The tenants also requested that the landlord be compelled to provide them with the name of the owner of the rental unit and stated in their written submissions that because they have noted that other residents have pets and barbeques, both of which are prohibited under the tenants' tenancy agreement, the tenants believe they also have the right to have pets and barbeques.

Analysis

The tenant has asked that I restrict the landlord's right to enter the rental unit and specifically state that SB and MB cannot attend within 1 metre of the unit. I find that while the landlord has on occasion given deficient notices in that they did not state a time of entry or provide a reason for entry, for the most part, the evidence shows that the landlord has complied with the Act. The parties agreed that the building is an older building and given the tenant's belief that significant repairs are required, the tenant cannot object to multiple notices of entry for the purpose of performing repairs. I find the tenant's demands to be unreasonable and I find that he has on occasion denied the landlord entry into the unit when the landlord had a legal right to enter. The landlord is not obligated to provide information about the people who will be entering the unit. They are only required to tell the tenant the purpose for entry. The tenant has no right to demand the names or credentials of those who are admitted to the unit, nor does he have the right to deny the landlord entry because he does not believe a particular repair is required. The landlord has a responsibility to maintain the building and the way in which they prioritize repairs may not coincide with the tenant's list of priorities. This does not give the tenant the right to deny entry when he has been given a legal notice.

The landlord does not need to give the tenant a notice of entry in any approved form, nor does the notice have to contain the name or letterhead of the corporate landlord. Section 29(1)(b) simply requires that the notice state the date and time and the reasonable purpose for entry. I find the tenant's objections to the notices he has received to be unreasonable.

I find insufficient evidence to show that the landlord's agent has illegally entered the rental unit. If the agent did enter the unit on the date on which the tenant wrongfully denied her entry, she had the right to do so. If the agent left the door ajar when she left, and I make no finding on that issue as there is insufficient evidence to prove that this occurred, I would remind her that she has an obligation to keep the unit secure and ensure that the door is closed behind her.

With respect to the objection that the landlord on one occasion arrived 90 minutes after the stated time of entry, I recognize that it is often difficult when managing a building of this size and dealing with tradespeople to pinpoint an exact time of entry. I would suggest that in the future,

the landlord state on the notice a window of no greater than 2 hours in which entry will take place. If entry cannot occur during that window, the landlord should obtain the tenant's consent before entering. I urge the tenant to consider that if the landlord seeks his consent in these circumstances, while denying the landlord access may bring him some satisfaction, he will simply be inviting a second disturbance if he forces the landlord to serve a new notice of entry.

I accept that the behaviour of the agents has not always been professional or polite. However, the behaviour of the tenant has not been professional or polite either. The tenant's written submissions contained repeated slurs against the agents and I have no doubt that the tenant has freely shared those opinions in person as well. I urge both parties to behave with a level of decorum befitting a professional relationship and avoid calling each other names, using foul language or leveling accusations at one another.

I find that the tenant has not established a reason to limit the right of the landlord to access the rental unit and I therefore dismiss that part of the claim.

In order for the tenant to obtain from the Residential Tenancy Branch an order compelling the landlord to perform repairs, the tenant must prove that he has brought the requested repairs to the attention of the landlord who has either failed to perform repairs at all or has inadequately performed repairs. The tenant did not deny the landlord's allegation that he has not brought repair issues to the attention of the landlord. I decline to issue an order compelling the landlord to perform repairs which were only brought to his attention through the application for dispute resolution. As for the issue of the installation of the glass shower door, I accept that this was an issue of which the landlord was previously aware. The decision resulting from the December Hearing does not say that the landlord agreed to install such a door, but merely that the landlord was at liberty to do so. I cannot consider the tenant's photographs since the landlord was not given a legible copy and I am therefore unable to determine that the partition is as much of an obstruction as is claimed by the tenant. As the landlord denied having agreed to the installation of the glass door and in the absence of persuasive evidence to corroborate the tenant's claim that the partition should be replaced, I dismiss the claim for repairs.

Turning to the monetary claim, the tenant cannot make a payment to the landlord in settlement of a repair issue and later change his mind and demand repayment. The tenant's own testimony is that the money was paid not as an admission of liability and therefore any determination that the leak was not caused by the tenant would not result in a requirement that the landlord repay those monies. While it may be that the tenant now regrets having made that payment, there is no legal basis on which he can demand recovery of those monies.

As is the case with their other claims, the tenants bear the burden of proving their entitlement to their monetary claim on the balance of probabilities. I note that the tenants originally sought to recover more than the amount of rent paid during their 33 month tenancy, although they abandoned that part of their claim which fell outside the Branch's $25,000.00 jurisdiction. The tenants must prove that the landlord in some way violated the Act or tenancy agreement and that they suffered a compensable loss as a result. While there is no question that the

interactions between the parties have an undercurrent of hostility, that hostility is evident on the parts of both the landlord and the tenants and sadly has become the only position from which they seem able to communicate.

I find that much of the aggravation experienced by the tenant has been the result of him having challenged the landlord's tradespeople and taking issue with the landlord entering the unit despite having received legal notices of entry. The fact that the landlord telephoned the police on 2 occasions does not speak to the landlord attempting to deprive the tenants of quiet enjoyment, but rather to the inability of the parties to engage in civil discourse.

I accept that the landlord took an inordinately long time to repair the ceiling in the bathroom, but I find that this did not affect the tenants' use of the bathroom to a degree which would attract compensation as the repair was cosmetic and the bathroom was still fully capable of being used as a bathroom.

I find that the tenants have not proven that they have lost the value of their tenancy and I find no basis whatsoever to award aggravated damages. I am unable to find that the landlord failed to perform their obligations under the Act or tenancy agreement or if they did fail in that obligation, as was the case with the ceiling repair, that compensation is warranted. I dismiss the monetary claim.

As for the tenants' request for an order compelling the landlord to provide the tenants with the name of the owner of the rental unit, I find no reason why I should issue such an order. The tenants have not proven that they have an entitlement to that information and the Act simply requires that the landlord provide the tenant with the name and address of someone who falls under the definition of "landlord" under the Act. I find that the corporate landlord falls within that definition and therefore the tenant is not deprived of any remedy as a result of not having been voluntarily given the name of the owner. The tenant is free to perform a title search at the Land Title Office should he choose to do so.

As for the tenants' assertion that they have the right to have pets and barbeques despite a prohibition against these in their tenancy agreement, I remind the tenants that they are bound by the terms of their own tenancy agreement. The landlord is not obligated to enter into the same tenancy agreement with other tenants, nor is the landlord of a residential unit obligated to allow pets or barbeques for these tenants just because they have allowed others to enjoy those privileges. The provisions of the *Manufactured Home Park Tenancy Act* require landlords of manufactured home parks to apply park rules equally to all tenants, but there is no similar provision in the *Residential Tenancy Act*. I find that had the legislature wished to impose such a requirement on landlords of residential tenancies, they would have done so using the same explicit language. Because there is no such provision in the *Residential Tenancy Act*, I find that the landlord here is not required to apply rules equally amongst tenants.

Conclusion

The tenants' claim is dismissed in its entirety.

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 20, 2015

Residential Tenancy Branch