Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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 evidence and testimony provided.

Preliminary Matters

The tenant supplied the landlord with five pages of evidence; that evidence was not before me. The parties were told that if there were any documents that I believed were required to be submitted after the hearing I would ask that they be submitted.

The landlord confirmed receipt of the hearing documents in October 2014. The landlord submitted 22 pages of evidence to the Residential Tenancy Branch on May 1, 2015. That evidence was sent to the tenant via registered mail on April 27, 2015. The landlord could not locate the tracking number for the registered mail. The tenant had yet to receive the evidence. The deemed service date of this evidence would have been May 2, 2015.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure provide, in part:

> *The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing*.

Therefore, as the landlord's evidence was not provided to the tenant at least seven days prior to the hearing that evidence was set aside. The landlord was liberty to make oral submissions.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $1,003.75 for a loss of quiet enjoyment?

Is the tenant entitled to return of the balance of the $362.50 security deposit paid?

Background and Evidence

The tenant originally signed a tenancy agreement commencing February 13, 2013 for unit 305. Later a flood occurred in unit 305 and the tenant was moved to unit 304. A new tenancy agreement was not signed. The parties confirmed that they continued under the same terms as those included in the previous tenancy. The security deposit in the sum of $362.50 was transferred to the new tenancy.

Rent in the sum of $725.00 was due on the first day of each month.

The tenancy ended after the tenant gave the landlord a note in July 2014 indicating she might move out in August 2014. In August the tenant contacted the landlord to confirm she would vacate at the end of the month. The landlord accepted this as notice.

The landlord was away at the end of August but had expected to meet with the tenant on the last day of the tenancy. The tenant had been dealing with the landlord's son, who was showing the unit in the landlord's absence. The tenant told the son that she would vacate on August 28, 2014; which she did. A condition inspection was not scheduled.

There was no dispute that the tenant provided the landlord with her forwarding address, sent via a text message after the tenant vacated. The landlord confirmed that he received the address and that he then returned $42.25 of the security deposit. The tenant had not signed agreeing to any deductions from the deposit. The landlord said the funds were returned within 15 days but a claim had not been made against the deposit.

The tenant has claimed return of the balance of the security deposit.

The tenant has also claimed compensation for the loss of quiet enjoyment from June to August 2014 as the result of on-going construction disruptions in the sum of $334.58 over each of June, July and August 2014.

There was no dispute that during the first week of June 2014 the landlord commenced a required construction program to replace the roof of this multi-unit residential property.

The tenant and eight other occupants of the upper floor of the building gave the landlord a letter dated July 15, 2014, reporting that the construction was disrupting their lives and causing inconvenience due to noise and debris. The tenants informed the landlord that work commenced at 6:45 a.m. and continued to 8 p.m. The extreme noise made it difficult to remain in the units and the balconies could not be used due to the repairs and constant garbage falling on the balcony. The tenants requested a rent reduction.

The landlord did not dispute the details of the work that was completed, the hours that the work was completed or the disruption caused to the tenant. The landlord was concerned about the well-being of the tenant but the construction was addressing repairs that could not be left undone.

The tenant said that after the July 15, 2014 letter was given to the landlord they received a July 2, 2014 letter from the property owner. The owner stated that the roof would be completed within the day and that he appreciated the cooperation of the tenants, as there was some inconvenience caused by the construction. The landlord pointed out the repairs would make the building more enjoyable and that rents would continue at below market levels. The landlord promised to reduce the hours of work to 8 a.m. to 6 p.m. The tenants were given this letter two weeks after it was dated.

The tenant said that from the beginning of the construction they were told it would only last a week, then another week. The landlord kept extending the time the project would take to complete. The landlord said that unforeseen issues arose that had to be addressed. The landlord understood the tenant would not be happy with the construction, but they had no choice but to complete the repairs.

During the hearing the tenant agreed that the July 22, 104 letter and July 15, 201 letters contained in the landlord's evidence could be referenced. The tenant had these documents before her.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred. A party making a claim for damages must also demonstrate, in accordance with section 7 of the Act that they took steps to minimize the loss they are claiming.

As referenced in policy, the Act allows a tenant to make a claim in damages against a landlord where there has been a breach of the tenancy agreement or the Act. Damages is money awarded to a party who has suffered a loss which the law recognizes

The tenant has submitted a claim in damages as the result of a loss of quiet enjoyment.

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*

Residential Tenancy Branch (RTB) Policy suggests that a claim for quiet enjoyment must include consideration of factors such as the amount of disruption suffered by the tenant, the reasons for the disruptions, if there was any benefit to the tenants for the disruptions and whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant. I find this to be a reasonable policy.

From the evidence before me there is no dispute that the tenant did suffer considerable disruption between the hours of 6:45 a.m. to 8 p.m. from the first week of June 2014 until at least mid-July. After that time the hours of work were reduced to 8 a.m. to 6 p.m. but continued over the weekends.

A landlord is required to make repairs and to complete maintenance to residential property and to ignore repairs would form a breach of section 32 of the Act. Therefore, I find that this repair work caused a disturbance that was beyond the landlord's control. However, the landlord was in a position to minimize the disruptions to the tenant by reasonably limiting the hours and days work would take place. Even though the work was required this did not allow the landlord to completely focus on those repairs in the absence of any attempt to mitigate the disruptions that would result.

From the evidence before me the tenant had to endure the sounds of repairs and loss of the balcony seven days a week for 12 weeks during the majority of waking hours. There was no respite given and when the tenant requested compensation in mid-July 2014, no substantial changes were made to the work schedule such as ceasing weekend work. Working fewer days would have lengthened the time the work would continue, but I find that would not have been unreasonable as the landlord is entitled to make repairs. In this case I find that the repairs were made without steps taken to minimize what I find to

have been a lengthy unreasonable disturbance that occurred outside of the normal expected hours of work.

The tenant also has a responsibility to minimize the claim. There was an absence of any evidence that concerns were expressed by the tenant prior to July 15, 2014. The tenant may have believed the work would end during June, but in the face of a claim for compensation it would have been reasonable for the tenant to approach the landlord earlier. The tenant made no other appeal to the landlord after the July 15, 2014 letter was issued and then gave notice to end the tenancy.

After considering the legislation, policy and the evidence I find that the tenant is entitled to compensation that recognizes the disturbances that were caused prior to 8 a.m. and after 5 p.m. each day and on weekends. It would have been reasonable for the landlord to adjust the work hours and the days of work but only a minimal adjustment was made.

The total claim for each month was $334.58. I find that from July 2, 2014 to August 28, 2014 the tenant is entitled to compensation in the sum of $200.00 which is compensation in recognition of the tenant's loss of quiet enjoyment outside of normal working hours that could have been minimized by the landlord. I have considered compensation from July 2, 2014 as the landlord's letter of that date makes it clear he was aware of the tenant's concerns at that time.

In relation to the sum claimed prior to July 2, 2014, I find that the tenant has failed to demonstrate any attempt to mitigate the claim for that period of time. There was no notice given to the landlord that would have alerted the landlord to the tenant's concern. A landlord cannot respond if they are not aware of a concern.

Therefore, I find that the balance of the claim for loss of quiet enjoyment is dismissed.

In relation to the security deposit Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord confirmed receipt of the tenant's forwarding address but returned only $42.25 of the deposit to the tenant. There was no written agreement given by the tenant allowing any deduction from the deposit. Further, there was an absence of evidence that a condition inspection report was scheduled by the landlord.

Therefore, pursuant to section 38(6) of the legislation I find that the security deposit must be doubled and that the tenant is entitled to return of $725.00; less $42.25.

As the tenant's application has merit I find that the tenant is entitled to recover the $50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for the balance of $932.75**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant is entitled to compensation for damage or loss in the sum of $200.00. The balance of the claim is dismissed.

The tenant is entitled to return of double the security deposit less the sum previously returned.

The tenant is entitled to filing fee costs.

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: May 06, 2015

Residential Tenancy Branch