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 tenants Application for Dispute Resolution, in which the tenant has requested compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant served the landlord with the application, hearing documents and evidence via registered mail sent on October 7, 2015. The tenant submitted a copy of the returned mail that provided a Canada Post stamp showing that the mail was unclaimed by the landlord. The mail was returned by Canada Post on November 12, 2014.

The tenant used the rental unit address for service as this is where the landlord resides in a unit separate from the rental unit in the home. The tenant confirmed that the landlord continues to reside in the home.

Therefore, pursuant to section 89 and 90 of the Act I find that the landlord is deemed served effective the fifth day after mailing, October 12, 2014. Refusal or neglect to claim registered mail does not allow a party to avoid service or provide a basis for review consideration.

Preliminary Matters

The tenant has claimed requesting return of double the security deposit. The tenant confirmed that the deposit has been returned and that the claim related to the deposit is withdrawn.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act in the sum of $23,873.00?

Background and Evidence

The tenancy commenced on September 1, 2012 and ended May 31, 2014. Rent was $650.00 per month. The tenant lived in the upper portion of the home and the landlord lived in the lower.

The tenant did not view the home prior to moving in. It was shortly after moving in that she discovered a problem with the water quality. The water source for the home comes from a nearby lake. Neighbours have water treatment systems; the landlord did not.

The poor water quality forms the basis of the tenant's claim, as follows:

Move in costs	$3,900.00
Move out costs	6550.00
Shower	8,400.00
Water delivery	1,243.00
Loss of laundry	3,780.00
TOTAL	$23,873.00

The tenant has supported her claim by issuing invoices for each portion of the claim detailing amounts that were paid in cash to others who provided services or for her own time.

The tenant has claimed the cost of moving into the unit as throughout the tenancy the water quality was poor. The tenant has charged time for three people at $100.00 per hour for 30 hours. The tenant also charged for cleaning the suite as it was not clean when she moved in.

The tenant said that during the first few months of the tenancy the landlord promised to have the water tested and the issue of sulphur fixed by installing a treatment system. By January 2015 the tenant realized the landlord was not going to make any changes. The landlord-tenant relationship had now deteriorated. The tenant stated that initially the landlord was responsive and appeared to take her concerns seriously, but then his attitude changed.

The tenant supplied a copy of a water quality report for the property completed prior to her tenancy, on July 29, 2013. The report indicated that the water had a sulphur odor. No recommendation was provided as a hydrogen sulphide test was required. The report mentioned an indoor swimming pool; there was no evidence before me that the home had an indoor swimming pool. The report included an address for the rental unit and was completed by a previous occupant of the home.

The tenant did not pursue water testing but the landlord apparently did. In November 2013 the landlord showed the tenant a copy of a report but he refused to give her a copy. A friend of the tenant wrote the landlord a letter, a copy of which was supplied as evidence. The undated letter stated the tenant had been using the friend's shower since November 2013 and that the landlord's failure to install a water treatment system had given the tenant a rash. The letter stated that since the tenant was pregnant she was concerned regarding any waterborne pathogens. The tenant had to travel for showers, using fuel and losing time to do so. The letter writer has a hotel and estimated the value of showers at $700.00 per month.

The tenant said that she travelled for a shower every day. She was not charged for this service. The tenant has claimed the cost of fuel over eight months at $20.00 per day and for her time at $15.00 per hour over eight months of driving time.

The tenant created an invoice for the cost of water based on a quote for a water delivery company. The tenant has claimed $9.95 per bottle for 4 bottles per week for 35 weeks of the tenancy; less $150.00 taken from the May 2014 rent payment.

The tenant submitted a September 30, 2014 letter issued by the tenant's father-in-law confirming he provided the tenant with water by filling five gallon containers. This occurred on 15 to 20 occasions commencing in the fall of 2013.On the one occasion this person went to the rental unit he found the water questionable as it smelled sulphurous and had a distinct yellow shade. This person states he would not drink this water.

Throughout the tenancy the tenant had use of a washing machine and dryer. Two weeks before the tenant vacated the landlord removed the machines. When he removed the machines the tenant had clothes in the dryer, which the landlord threw out of the machine. The tenant had claimed $80.00 for this incident. The tenant has also claimed $650.00 for laundry that could not be done at the house and another $3,000.00 for damage caused to her clothes due to the sulphur in the water. The tenant was washing only dark clothes at home as whites would stain.

As the tenant was pregnant she decided she could not live in the home; she had her child two weeks after vacating. The tenant did not test the water herself as the landlord had tested it and should have shown her the results. Just prior to vacating the unit the tenant made a report to the local health authority but she did not follow-up with them.

The tenant claimed the cost of three people at $100.00 per hour for 55 hours to move her and her 16 goats. The tenant had rented land nearby for her livestock and had to bear the cost of moving them. The tenant claimed $300.00 for fuel and the cost of two people at $15.00 per hour for pack for 25 hours.

The tenant supplied a photo of a stained bathtub and the inside of the toilet tank, as evidence of the problems with the water causing staining.

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 and that the damage or loss was a result of a breach of the tenancy agreement or Act. Verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss forms part of proving a claim.

I have considered Section 7 of the Act which provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) 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.*

Residential Tenancy Branch policy (#5) suggests that the party making a claim must do whatever is reasonable in order to minimize a claim so that costs are kept as low as

reasonably possible. If costs could have been avoided then the person making the claim will not be entitled to compensation.

Policy suggests that the tenant's duty to minimize the loss she has claimed commenced as soon as she was aware that damage was occurring. The tenant became aware of the water problem when she first moved in to the rental unit. She did rely upon the good will of the landlord to take steps to install a water treatment system. When that did not occur in the fall of 2013 the tenant continued to reside in the home for another six months. There was no evidence before me of any steps taken by the tenant during the final months of the tenancy to address the water problem, such as reporting the problem to the local health authority or having the water tested herself. The tenant did this as she was vacating and did not follow-up with the health authority.

When a landlord fails to respond to requests for repair, such as water quality issues, the tenant can then apply for dispute resolution requesting an Order for water testing and any required remediation.

From the evidence before me I find that there was some sort of water problem; two witness statements confirm the water smelled like sulphur and was tinted. Photos showed the stained fixtures. Whether this rendered the water unpotable or useable is not proven by any independent evidence; only the tenant's assumption.

The water quality test supplied as evidence had little weight. It did not make any recommendation and appeared to be for a home that contained a pool; something the tenant did not reference during the hearing. Further this report was issued before the start of the tenancy.

In the absence of the landlord I find that the tenant did suffer a loss of water quality during the early months of the tenancy during which time she relied upon the landlord to make the required repair. The two letters submitted as evidence provided some corroboration of the loss.

When the landlord failed to respond to the tenant's concerns within a reasonable period of time the next step should have been an application for dispute resolution, to obtain an Order the landlord test and address any water quality issues. When the tenant failed to take this step I find that the tenant failed to mitigate the claim and that the composition sought beyond the end of November 2013 is dismissed. A failure to mitigate, as suggested by RTB policy, will affect the monetary claim made.

In the absence of the landlord, who failed to claim the registered mail informing him of this hearing, I find that there was a loss of water quality. I find that the period of time during which the tenant accepted the landlord's assurance he would address the problem did not require further mitigation by the tenant. However, by December 2013 it would have been reasonable for the tenant to take steps to migitate the loss she has now claimed. The tenant could have submitted a claim requesting Orders and could have had the water tested herself. She did neither.

Therefore, I find that the tenant is tentitled to compensation in the sum of $400.00 for the loss suffered between September and November 2013. This compensation addresses the water quality issues reported to the landlord by the tenant. The balance of the claim is dismissed as the tenant failed to minimize the claim she has made beyond November 2013.

The claim for moving in costs is not supported as this is a cost any tenant assumes when moving into a property.

As the application has merit I find that the tenant is entitled to recover the $50.00 filing fee from the landlord.

Based on these determinations I grant the tenant a monetary Order for the balance of $450.00**.** 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 in the sum of $400.00. The balance of the claim is dismissed.

The tenant is entitled to a $50.00 filing fee.

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 14, 2015

Residential Tenancy Branch