



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened to address a claim by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The facts surrounding the beginning of the tenancy are not in dispute. In November 2014, the tenant's friend, DR, viewed the rental unit on behalf of the tenant to determine whether it was suitable for the tenant's needs. DR was shown the unit on 2 occasions by the previous occupant who was in the process of moving and cleaning. The tenant was unable to view the unit prior to entering into an agreement for rent, but relied on DR's inspection and representation that the unit would be suitable for her needs. The parties entered into an agreement that the tenancy would begin on December 1. Monthly rent was set at \$2,300.00.

The tenant arrived in Vancouver on December 7 at which time the parties signed the tenancy agreement. The tenant did not move into the unit until December 22 when her movers arrived with her belongings. The tenant spent the Christmas holidays out of town and arrived back in the unit on December 27 to begin unpacking her belongings. At some point between December 27-30, the tenant found rodent droppings in the unit which she reported to the landlord. The tenant acknowledged that the landlord set traps the same day she reported the rodent issue and stated that she believed the landlord had no idea there was a rodent problem in the unit before she informed him. The parties agreed that the landlord laid a number of traps and checked on them in the following weeks.

The tenant testified that there was a foul odour in the unit which she immediately reported to the landlord. She testified that she experienced headaches and nausea in the early part of January and requested that the landlord purchase and install a carbon monoxide detector, which he did immediately. The tenant stated that in early January, she left to stay with family in another city because of the headaches she was experiencing and her fear that the odour would also affect her dog.

On January 9, the tenant wrote the landlord a letter in which she asked him to eliminate the presence of rodents, mold and silverfish and odours no later than January 15, 2015. The landlord wrote her back on the same day and offered to terminate the tenancy, which the tenant accepted on January 12. On or about January 12, a pest control company attended at the unit. The landlord believed that the technician merely inspected the unit, but the tenant claimed that the technician removed something from the unit and advised her that the "major part of the problem" was gone. The tenant believed that the technician removed rodent carcasses and that these were causing the odour which had affected her. The tenant testified that she overheard the technician tell the landlord that the rodent issue would take months to resolve while the landlord testified that the technician told him that he could choose either a 3 month extermination plan or a 1 year service plan and that she recommended the 3 month plan.

The tenant testified that she slept in the unit for just 5-6 nights between December 22 and January 31 because she could not tolerate the odour and was concerned about the rodent infestation. The tenant stated that when she moved into the unit, she discovered that it had not been adequately cleaned and she spent considerable time cleaning. She also found that the landlord had not painted the unit and discovered safety issues which caused her concern, such as burn stains near electrical wiring in the laundry room and a lack of a fire door in the furnace room. The tenant argued that the unit was not fit for habitation and seeks the return of the rent paid for January, costs associated with staying in other locations during the tenancy, moving and packing costs, lost wages and other costs associated with securing a new tenancy elsewhere.

The landlord argued that he responded to the tenants' complaints within a reasonable period of time and stated that he had inspected the unit with the occupant who resided in the unit immediately prior to the tenancy and had found no significant issues with cleanliness. He further stated that he was unaware of a rodent issue until the tenant brought it to his attention and provided evidence showing that the tenant had intended to paint the unit, so he did not paint prior to her moving in.

Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 32(1) of the Act requires the landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation. Section 37(2)(a) requires outgoing tenants to leave the rental unit in reasonably clean condition. While the Act does not state the standard of cleanliness at which the landlord must provide the unit to an incoming tenant, I deduce from the requirements placed on the outgoing tenant that the landlord must provide the unit in reasonably clean condition at the outset of a new tenancy.

The landlord provided photographs showing the condition of the unit on December 7. In my opinion, the photographs show that the unit was in reasonably clean condition. While there may have been some minor cleaning issues, I find on the preponderance of the evidence that on the whole, the rental unit was suitable for occupation with respect to its cleanliness. I appreciate that the tenant may have a higher standard of cleanliness, particularly with respect to the carpet, but I find insufficient evidence to prove that the landlord breached his obligations under the Act.

The landlord cannot be expected to repair or remediate issues of which he is unaware. The tenant acknowledged that the landlord probably did not know about the rodent issue prior to the time she reported it and I find that the landlord acted quickly and reasonably to address the issue. Infestations are not issues which can be corrected overnight and I find that the landlord beginning with traps and then moving to a professional service when he became aware that his efforts were not successful, were reasonable and showed that he complied with his obligations under the Act.

With respect to the odour, I find insufficient evidence to show that the tenant reported the odour to the landlord prior to the end of December when she moved into the unit. Again, I find that the landlord acted reasonably to search for the cause of the odour.

Because the landlord had not heard complaints about odours from the previous occupants and because it appears that he was not made aware of the odour until the end of December when the tenant had moved her belongings into the unit, I find that he was not unreasonable in suggesting that it may be that the odour was emanating from the tenant's belongings. When the landlord discovered that this was not the case, I find that he acted reasonably in securing the services of the pest control company to investigate and as the tenant testified that the odour began abating immediately after the technician's first visit, it seems clear that the landlord's efforts were successful. I find insufficient evidence to show that the landlord breached his obligations under the Act.

I find insufficient evidence to show that the tenant ever reported to the landlord her safety concerns about the burn stains near wiring or the lack of a fire door. Again, the landlord cannot be expected to repair an issue of which he has no knowledge.

I find that the tenant has not met the first stage of the test outlined above and for that reason, I dismiss her claim in its entirety.

Conclusion

The claim 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: June 04, 2015

Residential Tenancy Branch

