Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC OLC PSF RP RPP ERP O FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

This tenancy ended May 1, 2015, three weeks prior to the Tenant filing his application for Dispute Resolution on May 22, 2015. Therefore, the majority of the Tenant`s requests for repairs, emergency repairs, for services or facilities, and to have the Landlord comply with the Act, as listed on his application for Dispute Resolution, no longer apply as this tenancy has ended.

In addition to the foregoing, there was undisputed evidence that the Landlord had filed an application for Dispute Resolution on May 14, 2015 and as part of their application the Landlord requested to keep the security and pet deposits. The Landlord`s application is scheduled to be heard on October 1, 2015.

Although the Tenant filed his application 8 days later than the Landlord, the Tenant was given a priority hearing time several months prior to the Landlord`s hearing, based on the Tenant`s requests for emergency repairs.

Based on the above, I dismissed the Tenant`s requests for emergency repairs, for repairs, for services or facilities, and to have the Landlord comply with the Act, regulations, or tenancy agreement, without leave to reapply. In addition, I declined to make a decision regarding the disbursement of the Tenant`s security and pet deposits as the disbursements of those deposits are hereby ordered to be determined in response to the Landlord`s application when it is heard on October 1, 2015.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on May 22, 2015 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for the return of his personal property; and to recover the cost of the filing fee from the Landlord for this application.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord and the Tenant. Each person gave affirmed testimony and confirmed receipt of application and evidence served by the Tenant.

The application was filed listing one corporate landlord as the respondent to this dispute. As indicated above there were two Agents at the hearing who provided affirmed testimony on behalf of the corporate Landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?
2. Should the Landlord be ordered to return the Tenant's personal property, a dust pan?

Background and Evidence

The undisputed evidence was that the Tenant entered into a written fixed term tenancy that began on April 1, 2014 and switched to a month to month tenancy after six months.

Rent of $795.00 was due on or before the first of each month and on or around April 1, 2014 the Tenant paid $398.00 as the security deposit plus $200.00 as the pet deposit.

The Tenant testified that the Landlord was conducting renovations to fire proof the building which required renovations inside his rental unit. He submitted that he had had a conversation in the presence of both the regional manager and the resident manager (the Landlords) where he informed them that he would be going out of the country for 3 weeks in April 2015.

The Tenant asserted that during the aforementioned conversation the Landlords agreed to have the renovations conducted on his rental unit during the 3 weeks he was away. He said he went away for the weekend on Friday March 13, 2015 and when he returned on March 16, 2015 he found his unit had been entered and the renovations had been started. The Tenant asserted that the renovations continued for “about seven days” and the contractors left his unit dirty and dusty when they left.

The Tenant submitted that his toilet had been removed and his personal possessions from his bathroom and closet had been strewn around his apartment. He argued that the renovation contractors were using his broom and dustpan and that there was drywall dust everywhere including on his electronic equipment. The Tenant submitted that when the renovations were completed in his rental unit he could not find his dust pan. He asserted that the contractors took his dust pan.

The Tenant argued that he was instructed to use another bathroom which was located one floor above his rental unit and that that bathroom was disgustingly dirty with urine and feces on the toilet and there was no shower curtain in the bathtub, as per his photographic evidence. The Tenant submitted that the contractors were also using the same bathroom and that they had tools stored in the living room of that apartment.

The Tenant testified that when he vacated the rental property on May 1, 2015 he returned his two laundry cards to the Landlord. He now seeks to recover $71.50 from the Landlords which consists of $10.00 deposit on each of the two cards plus the remaining credit balance on the cards of $31.00 and $20.50.

The Tenant now seeks monetary compensation for the loss of quiet enjoyment which includes the return of his March 2015 rent of $795.00; $8.00 for the cost of his dust pan which was not returned by the renovation contractors; $71.50 for the return of his laundry cards; and $22.72 for the cost of his photographs submitted in his evidence.

The Landlords testified that they purchased this property with two building in 2012 and that they were advised that they had to comply with orders issued by the municipality to upgrade the fire suppression and or fire proof materials inside the buildings. They confirmed they had been conducting the renovations to upgrade the fire proofing in the Tenant's building and rental unit. They submitted that the job was a major project that spanned over a period of several months.

The Landlords asserted that all the work did not commence until agreements were reached between the municipality, municipal building inspectors, WCB, the Landlord, and the renovation contractors. Notices were posted in the Tenant's building on December 7, 2014 with a schedule of when each rental unit would was scheduled for the renovation work and the preparations that were required by each occupant.

The Landlords testified that they regularly delivered a written notice to each rental unit one week prior to the date the work was scheduled to take place in their apartment. Those notices were slipped under each apartment door by the resident manager. The Landlords argued that they recalled discussing the renovations and required preparations with this Tenant and at no time did the Tenant request that they reschedule the work in his unit until April 2015.

The Landlords argued that this was a very large job and they were accommodating many tenants with re-scheduling dates to when it was more convenient for them. They said it would not have been too much of a problem to accommodate the Tenant if he had asked. The Landlords stated that the work would be conducted on two units at a time during normal working hours starting a Monday. They submitted that the work would normally finish on the following Friday. The Landlords noted that each stage of the work was dependent on the building inspectors passing each stage of work before work could continue. Therefore, there were times when the work would carry over to the following Monday if inspections were delayed.

The Landlords submitted that they had two private units designated for use by the occupants of each unit that was currently being renovated. They said this Tenant was issued a key for one of the private units for private use of the bathroom. The Landlords asserted that they had checked the private unit and the bathroom was clean when they gave the Tenant the key; however, they admitted that they did not have any evidence of the condition of that bathroom. They denied that the contractors were sharing the use of those units with the Tenant.

The Landlords testified that that the renovation contractors had their own tools and brooms which they used to sweep up their mess at the end of every work day. The Landlords confirmed that the renovation contractors did not dust the Tenant's possessions when the work was completed as they did not have authority to touch the Tenant's personal possessions other than to remove them from the work space.

The Landlords confirmed that the contractors may have moved the Tenant's possessions from the bathroom and his closest because when they attended his unit it was not prepared as per the instructions given to the Tenant prior to the renovation work. The Landlords stated they could not say what could have happened to the Tenant's dust pan and agreed to pay the Tenant the $8.00 claimed for the missing item.

The Landlord testified that when he attends the rental building office he checks the Landlord's drop box and on either May 1st or May 2nd he found a note in the box from the Tenant saying he had moved out. He said he also found the Tenant's keys and his two laundry cards inside the drop box.

The Landlords confirmed that they charged the Tenant a deposit of $10.00 for each laundry card. The cards are credited with money by inserting them into a machine and paying to load a specific amount onto the card. The minimum amount that can be loaded is $10.00 and the maximum allowed from the machine in the Landlord's office is $30.00. The machine designates the allowable increments that can be loaded onto the card; therefore, the Tenant could not dictate a specific amount he wanted to load on the card if it did not match one of the pre-set or predesignated amounts.

The Landlords argued that the cards could be loaded with up to $50.00 on other machines. They also submitted that to the best of their knowledge the cards could be used on other laundry machines managed by the same company.

Analysis

After careful consideration of the foregoing, relevant documentary evidence, and on a balance of probabilities I find as follows:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that a renovation project was conducted on the Tenant's rental unit for a period of approximately 7 days starting on March 16, 2015. As such, I make no findings on the matter of the necessity of the work. I accept the landlords' undisputed submission that the work was performed under agreement from the municipality, WorkSafe BC, and by inspection of the required building inspectors and that the work met the required health, safety and housing standards required by law.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair and up to building or fire codes. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the Landlords' testimony that they took all reasonable steps to ensure the Tenant was properly informed of the project work so that it would minimize the impact to the tenant. I also acknowledge that the Landlords understood that the work and its schedule was intensive and required intrusion into individual rental units.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Although the Tenant argued that he had requested the renovation work be rescheduled to a time in April 2015 he did not submit any documentary evidence to support that

submission. Therefore, in the presence of the Landlords' disputed testimony, I find the Tenant submitted insufficient evidence to prove he had requested a change in date when the renovations would be conducted on his rental unit.

While the Landlords indicated that they had provided the Tenant with the use of a private bathroom located in another unit one floor above the Tenant's unit, I accept the Tenant's assertion that there may have been other people using that washroom. In absence of proof to contrary, I also accept the Tenant's submission that the washroom was not clean and there was no shower curtain.

From the evidence, I accept that renovation was conducted on the Tenant's rental unit, off and on for a period of 7 days and during that time the Tenant did not have use of his own private washroom. I find there to be insufficient evidence to prove the Tenant's submission that the contractors failed to clean up any of the debris resulting from their work. That being said, I do accept that the Tenant would have been left with some drywall dust that had to be cleaned from his personal possessions.

While I accept that the Landlords took great efforts to minimize the disturbances to the Tenant by scheduling the renovations in advance and by issuing the Tenant notices on how to prepare their rental unit, I find it undeniable that the Tenant suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of his tenancy for the seven day period renovations were conducted in his rental unit. As a result, I find the Tenant is entitled to compensation for that loss.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the project work was completed Monday to Friday during normal work hours, which I determined to be between 7:30 a.m. and 5:00 p.m. The residential property was undisturbed for all evenings, nights and weekends except for

the fact that the Tenant was not able to use the washroom for any time during the entire 7 day renovation period and there was a presence of drywall dust in the rental unit.

Based on the above, I do not accept the Tenant's submission that he is entitled to the return of his entire March 2015 rent of $795.00 as the loss of quiet enjoyment occurred for only seven days. Furthermore and notwithstanding that the Tenant had to conduct some cleaning at the end of the renovations, the Tenant had full use of the rental unit except for the bathroom, during the renovation. Therefore, I grant the Tenant's application in the amount of **$182.96** ($795.00 x 12 months ÷ 365 days = daily rate of $26.14 x 7 days of renovation); a refund equal to seven days of rent.

Section 6(1) of the Regulations provides that if a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is

> (a) refundable upon return of the key or access device, and
>
> (b) no greater than the direct cost of replacing the key or access device.

Section 7(1)(g) of the Regulations provides that a landlord may charge a non-refundable fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

Upon review of the evidence before me I conclude that the $10.00 deposit charged by the Landlord for the issuance of each laundry card meets the requirements of section 6(1) of the Regulations as being a refundable fee paid by the Tenant.

The undisputed evidence was the Tenant paid two $10.00 deposits and he returned both laundry cards at the end of his tenancy. Accordingly, I grant the Tenant's application for the return of his laundry card deposits in the amount of **$20.00** (2 x $10.00).

In absence of a copy of the written tenancy agreement, I accept the undisputed submissions that payment for the use of the laundry machines was not included in rent or provided for as a service or facility under the tenancy agreement. Therefore, I accept the Landlord was entitled to charge a non-refundable fee for the actual usage of the laundry machines in accordance with section 7(1)(g).

Notwithstanding the foregoing, I find the Landlords' policy or process of requiring the Tenant to place a minimum of $10.00 and specific denominations of credit on a laundry

card does not meet the requirements of section 7(1)(g) to be non-refundable. Rather, I find that the Landlord's policy or process of requiring the Tenant to load specific amounts and in specific increments to be a refundable fee or a refundable amount of money or credit and any unused amount would be owed to the Tenant. The amounts loaded on the cards are credited or prepaid amounts until such time as those amounts are used in the laundry machines. Accordingly, I grant the Tenant's application for the return of the undisputed unused prepaid amounts of money loaded onto each laundry card in the amount of **$51.50** ($31.00 + $20.50).

The Landlords did not dispute the Tenant's claim for the cost to replace his dust pan. Accordingly, I grant the Tenant costs for the replacement of his dust pan in the amount of **$8.00.**

In regards to costs incurred by the Tenant to compile his photographic evidence in support his application, I find that the Tenant has chosen to incur those costs which cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. The Act does not stipulate that a tenant must provide photographic evidence in support of their application and does not stipulate they must be in printed form. In fact, there are provisions for parties to provide photographic evidence in other formats. Therefore, I find the costs for photographs do not meet the requirements for a loss denominated by the Act. Accordingly, the Tenant's claim of $22.72 is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$50.00**, pursuant to section 72(1) of the Act.

Conclusion

As indicated in the preliminary issues above, I declined to hear matters pertaining to the Tenant's request for the return of his security and pet deposits and I ordered that the disbursement of the security and pet deposits be determined by the Landlord's application which is scheduled to be heard on October 1, 2015.

The Tenant has partially succeeded with his application and has been granted monetary compensation and the return of his filing fee in the amount of $312.46 ($182.96 + $20.00 + $51.50 + $8.00 + $50.00).

The Tenant has been issued a Monetary Order for **$312.46**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the British Columbia Small Claims Court and enforced as an Order of that Court.

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: July 24, 2015

Residential Tenancy Branch