



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonald Commercial Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; two agents for the landlord and their legal counsel. I note the tenant participated on the call while she was waiting at an airport and as a result there were a number of interruptions. However, with patience from all parties, both parties provided full and responsive testimony.

During the hearing it became evident that the landlord had received additional evidence from the tenant that was not provided to the Residential Tenancy Branch, specifically some email correspondence between the parties during the tenancy. As the tenant was in the process of leaving the country I ordered the tenant could have until the end of business August 11, 2015 to submit copies of the evidence that was missing.

I advised both parties that if I did not receive the tenant's additional evidence by this deadline I would write my decision as if I did not have the evidence in front of me. As the landlord's legal counsel believe that the evidence supported, at least in part, the landlord's position he also offered to submit copies of the additional pages.

The landlord submitted copies of the missing correspondence by fax on July 30, 2015. On August 10, 2015 the tenant submitted a handwritten note stating that "upon my departure I encountered a family emergency and will not be returning to B.C. until later next week." The tenant did not indicate that she intended to submit the required evidence when she returned or not.

As the landlord has provided the copies of the missing correspondence and the tenant did not indicate that she intended to submit the evidence when she returned I have considered the additional evidence as submitted by the landlord to write this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on August 1, 2014 as a 1 year fixed term tenancy for the monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 paid.

The tenant submits that shortly after she moved into the rental unit she spoke to the landlord advising that there was a wet smell in her unit. The tenant was concerned about the impact on her health. She stated that she started getting nosebleeds. She states she seeks compensation for moving costs and her nosebleeds. The tenant provided no evidence of any moving costs or medical documentation confirming any health problems.

The tenant stated the landlord told her it was a leak and that they would be fixing the pipes soon. She stated that the following week she went directly to the property management company and was assured a plumber would come to make repairs. She submits that the plumber attended and opened up the wall in the entranceway, removed the baseboard and lifted the carpet.

The tenant submits it was the plumber who informed her that the landlord intended to complete a major plumbing project throughout the entire building. The tenant submits that had she known the landlord was intending to complete such a project she would not have entered into a tenancy agreement with them.

The tenant submits over the next several weeks the plumber completed work on the pipes but that there was still some leaking. A plastic cover with a zipper was placed over the drywall hole during this period.

Also during this period the tenant requested a rent reduction (twice) and states she received confirmation from the landlord's agent that she could end her tenancy anytime without notice and get her deposit back. The tenant vacated the rental unit on December 31, 2014.

The landlord submitted that there are actually two repair issues. First, the landlord had planned to complete a major project of replacing the aging pipes throughout the entire residential property. The landlord submits that this work actually began in January 2015 and was completed by April 2015, all after the tenancy ended.

The second repair issue is the specific problem in the tenant's rental unit that was dealt with temporarily while waiting for the major project to be completed that would permanently resolve the problem.

The landlord submits that the tenant was offered another unit to use until such time as the repairs were completed and that while she originally accepted the offer she later declined the offer.

The tenant submits that the landlord offered her the alternate unit in October stating that about 10 days' worth of work was required to prepare the alternate unit so she was expecting its availability by mid-November. She states that when she checked the unit 4 days before the end of November and it was still not ready she had had enough and decided to move out of the property altogether.

The tenant seeks compensation for hardship and the loss of quiet enjoyment in the amount of \$2,000.00. The tenant submits that she determined this amount because she determined market value for this and similar units is \$1,200.00. As such, she seeks \$400.00 per month for a total of the 5 months she resided in the rental unit.

The landlord submits that they do not believe any inconvenience or loss of quiet enjoyment would rise to the level that would warrant compensation. The landlord also submits that, in the alternative, if compensation is warranted the tenant has been sufficiently compensated by allowing her out of her fixed term tenancy agreement without pursuing lost revenue or liquidated damages.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and 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 make it suitable for occupation by a tenant.

Based on the submissions of both parties, I find the landlord responded to the tenant's complaint regarding a minor repair in her rental unit and dealt with the specific problem within a reasonable time. While I accept that the permanent solution was not completed during her tenancy I find the landlord had fulfilled their obligations under Section 32(1).

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.

From the testimony and evidence of both parties, I find that all aspects of the major refurbishment project were completed after the tenancy ended. As such, I find the tenant cannot be compensated for a loss of quiet enjoyment after the tenancy has ended.

As to the tenant's claim that she seeks compensation for moving, at least in part, because she would not have entered into a tenancy agreement had she known there was going to be a major project completed on the property, I find it is not possible for a third party, in the absence of any corroborating evidence, to determine what was in a person's mind when they entered into a contract of any kind.

As such, I find the tenant has not established what considerations she had or would have taken into account prior to entering into the tenancy agreement. Further, I find there is no evidence before me that confirms that the tenant informed the landlord that she wanted to be made aware of any repairs planned before she entered into a tenancy agreement. I find, therefore, landlord was not bound to disclose, prior to entering into

the tenancy agreement, any temporary repair or refurbishment projects that may have been planned.

As to a loss of quiet enjoyment resulting from the minor temporary repairs I find the tenant has failed to establish that her quiet enjoyment was breached. I accept the landlord's position that these repairs do not rise to a level of inconvenience or disturbance that would warrant compensation.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution 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: August 11, 2015

Residential Tenancy Branch

