Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation from the Landlord for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on April 13, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Landlord stated that he did not believe the hearing should be allowed to proceed as his interpretation of section 60 (3) of the Act is that the Tenants' application would have to have been made prior to the previous dispute hearing on July 23, 2013. The Landlord's application was heard July 23, 2013.

Section 60 (1) says an application must be made within 2 years from the date the tenancy ends or is assigned. This tenancy ended April 15, 2013 and the Tenants' application was originally made on April 7, 2015 and then amended on April 13, 2015. I find the Tenants' application has met the filing time limits.

With regard to section 60 (3) of the Act this clause is a provision to extend the time to make an application for the time period past two years and up to the hearing date of a Tenant or Landlord's application which is already scheduled for a hearing if the date of the hearing is past the 2 year mark. Section 60 (3) does not say a cross application has to be made prior to a schedule hearing of an original application if within the prescribed time limit of 2 years.

Issues(s) to be Decided

1. Are there losses or damages and are the Tenants entitled to compensation?

Background and Evidence

This tenancy started on April 15, 2012 as a fixed term tenancy with an expiry date of April 30, 2013. Rent was $665.00 plus utilities of $160.00 for propane and $80.00 for hydro. The tenancy agreement also indicated a reconciliation of the utility payments would be calculated as necessary and a payment would be made to either the Landlord or Tenants depending who had the overage. The Tenant paid a security deposit of $332.50 and a pet deposit of 332.50 on April 4, 2012. The Tenancy ended on April 15, 2013.

The Tenant said they expected some return on their utility bill but the Landlord did not pay them so the Tenant made this application. The Tenant said her first claim is for an overpayment for propane in the amount of $1,153.11. The Tenant said she calculated this by using the total amount the Tenants paid the Landlord for propane, in the amount of $1,760.00 less the amount the Landlord said was the actual amount of propane used in the amount of $606.89. The Tenant said $1,769.00 - $606.89 = $1,153.11. The Tenant said the Landlord owes her $1,153.11 for overpayment of the propane.

The Landlord said that in his previous dispute hearing the Arbitrator said the Act does not cover utilities; therefore the Tenants' claim for propane should be disallowed. The Arbitrator told the parties that the Act has jurisdiction over all residential tenancy matters and residential tenancy agreements. This residential tenancy agreement and addendum (clause 8) clearly states how utilities are to be handled and the utilities are part of the residential tenancy agreement. Consequently the Residential Tenancy Act does have jurisdiction over the utilities and this claim will be heard. The Arbitrator told the Landlord he would make note of the Landlord's objection.

Further the Landlord said he agreed with the Tenants' calculations but the Landlord said he made a verbal agreement to keep the propane overpayment in lieu of other damages. The Landlord said he made this agreement on the phone with the male Tenant.

The female Tenant said she was part of all the phone conversation by speaker phone with the Landlord and there was no agreement on the propane overpayment with the Tenants. The Landlord said he did make the agreement with the male Tenant and he does not believe his conversations on the phone with the Tenants were on speaker phone so the Landlord said he did not believe the female Tenant heard the agreement between the Landlord and the male Tenant.

The Tenant continued to say that the Landlord also should reimburse the Tenant for $157.37 of hydro as the Landlord had a shop and appliances that ran of the hydro on the property. The Tenant said there is a main meter and a separate meter for the rental unit. The Tenant said they calculated the hydro payments as $722.63 on the rental unit meter not the $882.06 calculated by the Landlord from the main meter. The Tenant said the difference is the Landlord used the exterior meter and the Tenants used the

interior meter that was for the rental unit only. The Tenant said they paid $880.00 in total so if you used the rental unit meter the hydro was $722.63 and the overpayment is $880.00 - $722.63 = $157.37.

The Landlord said he does not believe the Residential Act has jurisdiction on utilities therefore the utilities should not be part of the application or hearing. As well the Landlord said there is nothing in the tenancy agreement about sharing the utilities.

The third claim made by the Tenants is for $166.25 for the loss of water from December 21, 2012 for 1 week. The Tenant said they calculated the $166.25 by dividing the rent of $665.00 per month by 4 weeks which is $166.25. The Tenant said they are claiming $166.25 for no water for 1 week.

The Landlord said the tenancy agreement does not include water and the addendum point #5 says the Tenants can use the gravity feed water system but the water is not guaranteed. The Landlord said the Tenants rented the unit understanding this and initialed the water addendum clause # 5. The Landlord said he is not responsible to supply water to this rental unit.

The Tenants' forth claim is for the oven in the stove not working for approximately 18 days in January 2013. The Tenant said she told the Landlord the oven was not working on January 12, 2013 and the oven was fixed on January 30, 2013. The Tenant said they are requesting $75.00 in compensation for the oven not working.

The Landlord said the burners in the propane stove did work so the Tenants could still cook. The Landlord continued to say that he tried to get the oven fixed in a timely manner but the technicians were busy and they had to order parts to fix the oven. The Landlord said he believes he did fix the oven in a reasonable time frame. The Landlord said the claim should be dismissed as he fixed the issue in an appropriate time.

The Tenant said their fifth claim is for loss of quiet enjoyment of the rental unit. The Tenant said the Landlord came over to the rental unit common area and talked to her guests without being invited to do so and the Landlord hung around the rental unit on occasions which made her uncomfortable. The Tenant said she is requesting the equivalent of 2 months' rent for their loss of quiet enjoyment in the amount of $1,330.00.

The Landlord said he did talk with guests on the property but it was always in common areas. The Landlord said the tenancy agreement says the Tenants only rented the rental house not the grounds around it. The Landlord said he did not infringe on the Tenants privacy. As well the Landlord said he always asked for permission prior to entering the rental unit and he told the Tenants about their rights as tenants.

The Tenants' final claim is a request for $150.00 for dirt which they brought on to the property for a garden. The Tenant said the Landlord would not let them take the dirt away at the end of the tenancy so now they want compensation of $150.00 for the dirt that they put in the garden.

The Landlord said he told the Tenants if they put dirt on the property then the dirt becomes part of the property. The Landlord said this was agreed to and so the dirt is part of the property now.

The Tenant said they were not told if they put dirt on the ground it would become part of the property.

In closing the Landlord said the Tenants' have not proven their claims and the application should be dismissed.

In closing the Tenant said this was a painful tenancy.

Analysis

It appears from the testimony and evidence that there is and have been some issues between the Tenant and Landlord as the testimony and evidence is contradictory with some issues. Consequently I will use the evidence that is agreed upon like the tenancy agreement and the addendum to the tenancy agreement as well as the Act to make my decision.

Firstly the Act applies to tenancy agreements, rental units and other residential property. This tenancy and the claims made in the Tenants application are residential tenancy issues and within the jurisdiction of the Residential Tenancy Act.

The dispute about the propane and the hydro are both governed by the tenancy agreement and addendum clause 8. The addendum clause 8 says the cost to the Tenants will be $160.00 per month for propane and $80.00 per month for electricity. As well clause 8 of the addendum says the amounts will be reviewed and adjusted to the actual costs when necessary. The adjustment was necessary at the end of the tenancy and that is where the dispute arose. The Landlord said he agrees with the Tenants calculations but he believes there was an agreement for the Landlord to retain the propane overpayment for other damages. The Landlord said it was a verbal agreement with the male Tenant and there is no record of it. The Tenant said there was no agreement with the Landlord to keep the overpayment of the propane. As both the Landlord and the Tenant agree on the Tenant's calculation of the propane costs and the Landlord does not have corroborative evidence to support his belief about an agreement to retain the propane over payment; I find for the Tenants and award the Tenants the propane overpayment in the amount of $1,153.11.

With respect to the hydro over payment the tenancy agreement addendum says that the second electrical meter for the rental unit is to be used for the hydro calculation. I accept the Tenants' calculation using the rental unit meter over the Landlord's calculation using the property meter as this is outlined in the addendum. Consequently,

I award the Tenants $157.37 in overpayment of the hydro bills as this is the method of calculating for the hydro costs outlined in the tenancy agreement/addendum.

Further the Tenants are requesting $166.25 for loss of water for 1 week in December, 2012. Clause # 5 of the tenancy agreement addendum says that the Tenants have the use of the gravity feed water system, but there is no guaranteed of the supply of the water. Both parties initialed this clause as understanding it and agreeing to it. Consequently I find the Landlord has no responsibility to guarantee water to the rental unit and therefore the Landlord is not responsible for a water shortage or for a water stoppage as the parties were aware of this potential situation at the start of the tenancy. I dismiss the Tenants' claim for $166.25 for lack of water in the rental unit.

With regard to the Tenants' forth claim for $75.00 for the oven not working in the rental unit from January 12 to January 30, 2013. Section 32 says a Landlord must maintain a rental unit that makes it suitable for occupation. Although an oven not working is not an emergency repair it is an essential facility of the rental unit and it is in the tenancy agreement as provided by the Landlord. Further appliances do break and then need repairs so an oven not working is not an uncommon issue. Given repairs were needed to the oven, what is a reasonable time period to repair an oven? Given that this was a propane oven, the malfunctions of the oven could have presented a safety hazard; I find the 18 days the Landlord took to have the oven repaired is not a reasonable time for the repairs to be completed. As well the oven is a facility included in the tenancy agreement therefore I find for the Tenant and award the Tenants $75.00 for the loss of use of the oven from January 12, 2013 to January 30, 2013.

Further the Tenants are requesting compensation of $1,330.00 for loss of quiet enjoyment of the rental unit due to the Landlord visiting with their guests and on occasion being close to the rental unit. To make a claim for loss of quiet enjoyment the Tenants must prove they have been substantially interfered with. Temporary discomfort or inconvenience does not constitute a basis for a breach of covenant of quiet enjoyment. I have reviewed the Tenant's testimony and evidence and I find the interference the Tenant is claiming by the Landlord with the Tenants' guests and his proximity to the rental unit does not meet the levels of seriousness or significant that is require to be successful in a compensation claim. Talking to guests in common areas and walking by the rental unit is not grounds for loss of quiet enjoyment claims. I dismiss the Tenants claim for loss of quiet enjoyment in the amount of $1,330.00.

The Tenants' final claim is for $150.00 for dirt that was used in the garden at the rental property. For a claim to be successful for the loss of an asset a party must provide proof of the loss of the assets and verify the assets value with a paid receipt. In this case the amount of loss has not been proven or verified therefore I dismiss the $150.00 claim for dirt at the rental unit due to lack of evidence.

As the Tenants have been partially successful in this matter, the Tenants are also entitled to recover from the Landlord the $50.00 filing fee for this proceeding. The Tenants will receive a monetary order for the balance owing as following:

Overpayment of Propane	$ 1,153.11	
Overpayment of Hydro	$ 157.37	
Loss of use of oven	$ 75.00	
Recover filing fee	$ 50.00	
Subtotal:		$1,435.48
Balance Owing		$ 1,435.48

Conclusion

A Monetary Order in the amount of $1,435.48 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: September 16, 2015

Residential Tenancy Branch