Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications.

On March 26, 2015 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss.

The female Tenant stated that on March 27, 2015 the Application for Dispute Resolution, the Notice of Hearing, evidence the Tenant submitted to the Residential Tenancy Branch on March 31, 2015, and evidence the Tenant submitted to the Residential Tenancy Branch on April 28, 2015 were personally served to the Landlord. The Landlord denied receiving any documents from the Tenants in March of 2015.

The male Tenant stated that on March 31, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on March 31, 2015 were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenants cited a Canada Post tracking number that corroborates this statement.

The Landlord stated that sometime in April of 2015 he received notification that he had registered mail. He stated that he went to the post office and viewed the package that had been sent to him but he opted not to accept the mail because the package did not have a return address. He stated that his decision not to accept the mail was, in part, due to security concerns regarding a potential explosive device.

On the basis of the undisputed evidence, I find that the documents mailed to the Landlord on March 31, 2015 have been served in accordance with section 89 of the *Residential Tenancy Act (Act).* The Landlord cannot avoid service by refusing to pick up registered mail.

The Landlord stated that sometime during the first week of June of 2015 the documents the Tenant submitted to the Residential Tenancy Branch on April 28, 2015 were personally served to him. As the Landlord acknowledged receipt of these documents they were accepted as evidence for these proceedings.

On April 27, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent or utilities; for a monetary Order for unpaid rent; to keep all or

part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on April 28, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to each Tenant. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 01, 2015 the Tenants submitted another package of evidence to the Residential Tenancy Branch. The female Tenant stated that these documents were personally served to the Landlord on March 27, 2015. When it was pointed out that some of these documents were created after March 27, 2015 the female Tenant stated she is unsure of when they were served to the Landlord.

The Landlord stated that during the first week of June of 2015 the documents the Tenants submitted to the Residential Tenancy Branch on June 01, 2015 were personally served to him. As the Landlord acknowledged receipt of these documents they were accepted as evidence for these proceedings.

On June 29, 2015 the Landlord submitted a package of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were served to the Tenants by registered mail on June 29, 2015. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on July 14, 2015 so the matter was adjourned. In my interim decision of July 17, 2015 the parties were advised that no additional evidence could be submitted now that the proceedings have commenced.

On September 10, 2015 and September 16, 2015 the Landlord submitted additional documents to the Residential Tenancy Branch. As the parties were directed that no additional evidence could be submitted after July 14, 2015, these documents are not accepted as evidence.

The hearing was reconvened on October 19, 2015 and was concluded on that date.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

The Landlord has claimed compensation, in the amount of $3,035.00, for “slander”. I do not have authority to grant compensation for “slander” and I am, therefore, not considering this aspect of the Landlord’s claim.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent or utilities, loss of revenue, and damage to the rental unit?
Are the Tenants entitled to compensation for loss of quiet enjoyment of the rental unit?

Is the Landlord entitled to retain all or part of the security deposit or should it be returned to the Tenants?

Background and Evidence

The Landlord and the Tenants agreed that:

- the tenancy began on February 28, 2015;
- the Tenants agreed to pay monthly rent of $1,050.00 by the first day of each month;
- the Tenants agreed to pay the entire gas bill for the residential complex;
- the parties did not sign a tenancy agreement prior to the start of the tenancy;
- on March 11, 2015 the Landlord created a document he refers to as a "rental agreement", which he gave to the Tenants on March 11, 2015;
- this "rental agreement", which was submitted in evidence, declares that the Tenants must pay 2/3 of the gas and hydro charges;
- the Tenants did not agree to sign this "rental agreement"; and
- the Tenants paid a security deposit of $525.00.

The Landlord stated that the Tenants also agreed to pay the entire hydro bill and cable bill for the residential complex, which the Tenants deny.

The male Tenant stated on March 19, 2015 the Tenants gave the Landlord verbal notice of their intent to vacate the rental unit and that they advised him they would be vacating "immediately". He stated that the Tenants vacated on March 21, 2015. The Landlord stated that he never received verbal or written notice of the Tenants' intent to vacate and he was not aware they had vacated until March 27, 2015.

The female Tenant stated that on March 27, 2015 the Tenants placed a document on the front door of the rental unit, in which the Tenants provided a forwarding address and written notice of their intent to vacate by April 01, 2015. The Tenants submitted a photograph of the package that was attached to the Landlord's door.

The Landlord stated that a package was left at his door in March or April of 2015 but he left it on the ground for approximately two weeks and opted not to open it. He stated that on April 17, 2015 or April 20, 2015 his friends opened the package and gave it to him, which is when he first received a forwarding address for the Tenants.

The Landlord is seeking compensation for lost revenue from April of 2015 as the rental unit was vacated without proper notice. The Landlord stated that he did not advertise for new tenants because he was frightened. When asked why he was frightened he stated that someone had left a sign on the door or the rental unit identifying the house as a "drug house" and that he feared he was being stalked. He stated that he was able to find a friend to move into the rental unit in May of 2015.

The male Tenant denied placing a sign on the door of the rental unit identifying it as a drug house.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because of a variety of deficiencies with the rental unit. The male Tenant stated that the kitchen

tap broke on February 28, 2015; that it was reported to the Landlord on March 01, 2015; and that it was repaired four days after it was reported, although it leaked into the bottom cupboard after the repair. In the Tenants' written submission, the Tenants declared that the tap broke on March 10, 2015 and was reported on that date.

The Landlord stated that the broken tap was reported on March 10, 2015; that it was repaired on March 11, 2015; and that he was not informed that the tap continued to leak after the repair.

The male Tenant stated that there were a variety of minor repairs needed when they agreed to rent the rental unit; that the Landlord agreed to repairs those deficiencies prior to the start of the tenancy; and they were never repaired.

The Landlord stated that the Tenants asked to move in early; that he agreed they could move in early, with the proviso that the remaining minor repairs would be completed after they moved in; and the repairs were not completed as the Tenants were avoiding him.

The male Tenant stated when they moved into the rental unit they discovered the rental unit was wet in several areas and that there was mould in the unit, which was not disclosed to them prior to the start of the tenancy. The Tenants submitted several photographs of areas they contend are wet and mouldy.

The Landlord stated that he is not aware of any moisture problems with the rental unit and that none of the areas depicted in the photographs are wet.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord kicked in their rear door on March 24, 2015.

The male Tenant stated that:

- they were home when the Landlord knocked on their front door;
- because of prior problems with the Landlord they refused to allow him to enter their rental unit;
- the Landlord went to the rear of the unit and kicked open the door to the porch;
- the Landlord banged on the door leading from the porch to the kitchen;
- they reported the incident to the police;
- the police attended the rental unit and advised they could do nothing because the Landlord owns the home; and
- the Landlord left the residential complex prior to the police attending.

The Landlord stated that he did not kick in their back door; that the police have never attempted to contact him regarding this incident; and that he does not know how the door was damaged.

The Tenants submitted a copy of a police report relating to the incident on March 24, 2015. The police report confirms there is damage to the porch door.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord has turned off the gas to the rental unit on several occasions.

The female Tenant stated that the gas was turned off on March 16, 2015 and turned back on March 18, 2015; that it was turned off on March 23, 2015 and turned back on March 25, 2015;

and that it was turned off on March 26, 2015 and it remained off for the duration of their stay. She had difficulty articulating these dates and had to correct herself on several occasions. She stated that when the gas was turned off the furnace simply blew cold air, as the fan operates on electricity.

The female Tenant stated that they contacted the police in regards to the gas being shut off. The Tenants submitted a police report that shows the Tenants reported their gas being shut off on March 25, 2015.

The male Tenant stated on March 16, 2015 they contacted the city to report the gas being shut off and was told a city employee would contact the Landlord. He stated that he does not know if anyone from the city contacted the employee, although the gas was turned back on in the late afternoon of March 16, 2015.

The Landlord stated that he did not turn off the gas during this tenancy, although he did get a telephone call from city officials advising him that he had been accused of shutting off the gas. He stated that the police did not speak to him regarding a problem with the gas.

The Landlord initially stated that the gas has to be turned off from inside the rental unit by turning off the thermostat. He subsequently acknowledged that he has the ability to close the gas line from a location in the laundry room.

The male Tenant stated that he does not know how to turn off the gas line; that the thermostat does not turn off the gas line; and that the thermostat simply allows the Tenants to adjust the temperature in the rental unit.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because they could frequently hear the Landlord, who lives in the unit below them, “ranting”.

The female Tenant stated that on March 10, 2015, after the Tenants reported a problem with the kitchen faucet, the Landlord was periodically “ranting” for approximately seven hours. She stated that she could hear him calling them liars and referring to her in derogatory terms, which frightened and disturbed her.

The Landlord stated that he was upset on March 10, 2015 because the Tenants had broken the kitchen faucet and the male Tenant had been hammering nails in the floor. He denied “ranting” but he acknowledged having a loud argument with a friend that day over the telephone, during which he may have complained about the Tenants. He stated it is possible that he used derogatory terms but he was not referring to the Tenants when he used them. He submits that the Tenants did not “have to sit at his door and listen”.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because smoke from the Landlord’s apartment frequently drifted into their rental unit through the heating vent. The male Tenant stated that he believes it was cigarette smoke as well as an “odd” odour he thinks may have been crack cocaine.

The male Tenant stated that on March 25, 2015 the smell was reported to the police department because the Tenants were concerned about fire and the Landlord would not open his door. He stated that the police contacted the fire department and fire fighters entered the Landlord’s

residence as they were concerned for the Landlord's safety. In the Tenants' written submission the Tenants declared that this incident occurred on March 22, 2015.

The Landlord stated that on March 21, 2015 firefighters and police officers entered his rental unit while he was not home, by forcing open his door. He stated the he subsequently contacted the police department and was advised that they entered his unit because the Tenants had reported seeing a "puff of smoke" when they turned on their furnace. The Landlord stated that he does not smoke cigarettes and that he smokes marijuana in his rental unit approximately once a day.

The Landlord contends that the Tenants could not have smelled smoke in the rental unit on March 21, 2015, when their concerns were reported to police, because he was not home that evening. He submitted a letter from a third party that indicates he was playing bingo from 2:30 p.m. until 11:00 p.m.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord cut their cable line.

The male Tenant stated that the Landlord was in a "mad rage" when he told the Tenants he had cut their cable line. He stated that the line was repaired by their cable provider two or three days later.

The Landlord stated that he was pruning the trees beside the house when he accidentally cut the Tenants' cable line. He stated that he immediately informed the Tenants the line had been cut and he personally repaired the line on the same day.

The Tenants stated that they were so disturbed by the aforementioned events that they moved out of the rental unit before the end of the first month of their tenancy. They are seeking compensation of $5,000.00 for the loss of their quiet enjoyment of the rental unit.

The Tenants submit that the stress of this tenancy contributed to the male Tenant being taken, by ambulance, to the hospital on March 15, 2015; the female Tenant getting a cold on March 16, 2015; the female Tenant attending the clinic on March 18, 2015 due to a difficulty with breathing; and the male Tenant having heart surgery on March 19, 2015. The Landlord stated that he understands the male Tenant has a heart attack in March of 2015.

The Landlord is seeking compensation of $600.00 for repairing the door and lock that were damaged when fire fighters forced open the door of his residence. He contends that the damage was the direct result of the Tenants making a false report of smoke to the police/fire department.

The Landlord is seeking compensation of $165.00 for hydro costs incurred during this tenancy. The Tenants dispute that claim because they never agreed to pay for hydro.

Analysis

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I find that a document which contained a forwarding address for the Tenants was posted on the Landlord's door on March 27, 2015.

Although the Landlord acknowledged that this document was left at his door in March or April of 2015 and that he left them on the ground for approximately two weeks, he is not certain when they were left at his door. I therefore must rely on section 90 of the *Act* when determining date of service, which stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Landlord is deemed to have received the forwarding address contained in this document on March 30, 2015.

In determining when the Landlord received the forwarding address I have placed no weight on the Landlord's testimony that he did not look at the documents until April 17, 2015 or April 20, 2015. The Landlord's decision to delay reading the document which contained the forwarding address does not alter the date he received those documents.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and he did not file an Application for Dispute Resolution until April 27, 2015, which is more than 15 days after the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act,* the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenants double the security deposit.

I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on March 31, 2015 in accordance with section 45 of the *Act*, the Tenants would have had to provide written notice to the Landlord on, or before, February 28, 2015. I find that the failure to provide written notice directly contributed to lost revenue the Landlord experienced in April of 2015.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Ac*t, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize the lost revenue experienced in April of 2015, as he did not advertise for a new occupant. Even if I were to accept that the Landlord was frightened of these Tenants, that does not explain why he would not make an effort to locate occupants he deemed acceptable. As the Landlord did not make reasonable efforts to mitigate his lost revenue for April of 2015, I dismiss his claim for lost revenue for that month.

I find that the Tenants submitted insufficient evidence to establish that the Landlord took more than one day to repair the kitchen tap when it broke. I find the timelines provided by the Tenants for this repair are inconsistent and therefore unreliable. At the hearing the male Tenant stated that the problem was reported on March 01, 2015 however in the written submission the Tenants reported it was reported on March 10, 2015, which is consistent with the testimony of the Landlord.

As the Tenants evidence is unreliable regarding the date of the report, I find I am unable to rely on their evidence regarding the time it took to repair the tap. As the Tenant has failed to establish that it took the Landlord an unreasonable amount of time to repair the kitchen tap, I find that the Tenant is not entitled to compensation for the problem with the kitchen tap.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment of the rental unit that includes, but is not limited to, reasonable privacy; freedom from unreasonable disturbance; and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*.

A failure to keep a rental unit in reasonable state of repair could constitute a breach of the covenant of quiet enjoyment if the failure to maintain the rental unit impacts occupant comfort. In these circumstances the minor deficiencies which the Landlord promised to repair had limited impact on the Tenants' ability to comfortably occupy the rental unit. Given that the Tenants occupied the rental unit for less than one month, I cannot conclude that they are entitled to compensation for any of these deficiencies.

Even if I were to accept the Tenants evidence that there were a variety of deficiencies with the rental unit, including mould, I cannot conclude that the deficiencies significantly impacted their quiet enjoyment of the rental unit, given that they occupied the rental unit for less than one month. I therefore would not be granting compensation for those deficiencies. In making this determination I was influenced, in large part, by the absence of evidence that the mould in the rental unit constituted a health hazard or that any of the medical issues experienced by the Tenants is related to their short stay in this rental unit.

I favour the evidence of the Tenants, who contend that the Landlord kicked in their porch door on March 24, 2015, over the testimony of the Landlord, who denied kicking in the door.

I favoured the Tenants' version of events regarding the door for the following reasons:

- the male Tenant's testimony regarding this incident was forthright and consistent;
- there is no dispute that the rear door was damaged and the Landlord has not provided an alternate explanation for the damage;
- the incident was reported to the police by the Tenants, which lends credibility to their version of events;
- there is nothing in the police report that would suggest the police doubted the version of events provided by the Tenants.

I favour the evidence of the Tenants, who contend that the Landlord turned off the gas to the rental unit on more than one occasion in March of 2015, over the testimony of the Landlord, who denied turning off the gas. I favour the Tenants' version of events, in large part, because the problem was reported to both the city and the police and I can find no reasonable explanation for making those reports other than a desire to have the gas turned back on. I note that the police report, which was submitted in evidence, indicates that the report was "founded not cleared", which implies that the attending police officers confirmed the report that the gas had been turned off.

I favoured the Tenants' version of events regarding the gas being turned off, in part, because the Landlord's testimony appeared evasive and was inconsistent. He initially stated that he did not have the ability to turn off the gas to the rental unit and that it was turned off by simply

turning off the thermostat. When he was asked if he was able to turn the gas off where it enters the rental unit he acknowledged that he could turn it off in the laundry room.

On the basis of the undisputed evidence, I find that on March 10, 2015 the Landlord was speaking loudly and was referring to the Tenants in a derogatory manner. Regardless of whether or not the Landlord intended the Tenants to hear his comments, I find they were loud enough to be overheard and that most people would be disturbed by the comments that were made, which I have not recorded in this decision due to their inappropriate nature.

I find, on the balance of probabilities, that smoke was entering the rental unit through the vents that connect the unit to the Landlord's residence. In reaching this conclusion I was influenced, in part, by the Landlord's testimony that he occasionally smokes marijuana in his rental unit.

In determining that smoke was entering the rental unit I placed more weight on the testimony of the male Tenant, who stated that the smell of smoke coming through the vents was reported to the police department, than on the testimony of the Landlord, who stated the police department told him they had received a report of a "puff of smoke" when the Tenants had turned on their furnace. I placed more weight on the Tenants' version of events, in part, because they were directly involved in the incident and the Landlord was relying on hearsay evidence. I also find it highly unlikely that firefighters would force entry into a residence if they could not detect some smells/evidence that corroborated the Tenants' concerns.

In considering the report about the smoke I have placed no weight on the Landlord's submission that he was not home on the evening of March 21, 2015, as there is no evidence to corroborate his testimony that this incident occurred on March 21, 2015, rather than on March 22, 2015 as the Tenants report in their written submission or on March 25, 2015 as the male Tenant testified**.** Although the Tenants provided inconsistent evidence regarding the date of the incident, I find it highly unlikely they would have reported a problem with the Landlord when the Landlord was not home.

On the basis of the undisputed evidence, I find that the Landlord cut the cable line to the rental unit. Even if I accepted the Landlord's testimony that the he accidentally cut the line, I find it reasonable for the Tenants to assume the line had been cut intentionally, given the Landlord's behaviour during their short tenancy.

When the aforementioned incidents are considered in their entirety, I find that the Landlord's behaviour significantly interfered with the Tenants' right to the quiet enjoyment of the rental unit and that the Tenants' acted reasonably when they vacated the rental unit as a result of those disturbances.

I grant the Tenants compensation of $3,150.00 in compensation for the loss of the quiet enjoyment of their rental unit, which is the equivalent of three month's rent. This award is intended to compensate the Tenants for both the general nature of the disturbances and the inconvenience of moving. Although I have insufficient evidence to conclude that the problems with this tenancy directly contributed to any medical issues the Tenants were experiencing during this tenancy, I find the disturbances and inconvenience of moving would have been exacerbated by the Tenants' medical issues.

In the absence of any direct evidence to corroborate the Landlord's submission that the Tenants falsely reported a concern about smoke in his residence, I cannot conclude that the Tenants are

obligated to pay for repairing the Landlord's door and lock that were damaged by firefighters. As previously stated, I find it unlikely that firefighters would force entry into a residence if they could not detect some smells/evidence that corroborated the Tenants' concerns. I therefore dismiss the Landlord's claim to recover the costs of repairing the door/lock.

Section 13(1) of the *Act* required the Landlord to create a written tenancy agreement, in large, part so both parties clearly understand the terms of their tenancy agreement. In the absence of a written tenancy agreement and on the basis of the Tenants' submission that they did not agree to pay for hydro, I find that the Landlord has failed to establish that the Tenants agreed to pay for hydro. I therefore dismiss the Landlord's claim for hydro costs.

In adjudicating this claim I placed no weight on the document the Landlord created on March 11, 2015, which he refers to as a "rental agreement". The Tenants did not sign this document to indicate they agreed with the document and it therefore does not establish they are required to pay for hydro.

I find that the Landlord's claims have been without merit and I dismiss his application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim of $3,150.00 in compensation for the loss of quiet enjoyment of their rental unit and I grant the Tenants a monetary Order for that amount. In the event the Landlord does not voluntarily 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.

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: October 25, 2015

Residential Tenancy Branch