Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, RP, RR, FF, O

Introduction
This hearing dealt with an application by the tenant for orders reducing the rent for repairs or services agreed upon but not provided; compensating the tenant for damage or loss including the cost of filing this application; and compelling the landlord to comply with the Act, regulation or tenancy agreement; to provide services or facilities required by the tenancy agreement or the law; and to make repairs to the rental unit. Both parties appeared and gave affirmed evidence.

At the beginning of the hearing I went through all the various evidence packages filed by the parties. The tenants had filed five packages within the time limit. The landlord acknowledged receipt of all of them except one that was an application for a summons to produce a document, an application that is not provided for in the Rules of Procedure. The tenant acknowledged that he had not served a copy of those documents on the landlord.

The landlord had filed one evidence package within the time required and the tenant acknowledged receipt of it.

The landlord filed a two page response to the tenants' second last submission. Most of the contents of this letter were included in the landlord's oral testimony and were not required to be admitted as written evidence on this proceeding.

The day before the hearing the tenant faxed more evidence to the Residential Tenancy Branch It had not made its' way to my desk before the hearing. This evidence package consisted of the tenants' further statement, invoices for the cost of photographs and photocopies that were submitted in evidence and some photographs.

First of all the *Residential Tenancy Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence so the invoices for the cost of photographs and photocopying cannot be considered.

Rule 2.5 of the *Rules of Procedure* provides that to the extent possible, when an applicant submits their application for dispute resolution to the Residential Tenancy Branch, they should also submit a detailed calculation of any monetary claim being made and copies of all documentary and digital evidence to be relied on at the hearing. Rule 3.7 provides that documents submitted into evidence must be readily identifiable, organized, clear and legible. Rule 3.13 states that where possible, copies of all the applicant's available evidence must be submitted to the Residential Tenancy Branch and served on the other party in a single complete package and an application submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not included in the initial evidence package. Rule 3.15 places similar obligations on a respondent.

Most of the photographs included in the last batch of photographs filed by the tenant are date stamped June 29. There was no reason why those photographs could not have been filed, if not with the tenants' application for dispute resolution, at least within the time limit for filing evidence for this hearing. Accordingly, those photographs have not been considered in the preparation of this decision nor has the last written statement filed by the tenant. Most of the contents of that statement were included in the tenant's sworn oral testimony, which has been considered in the preparation of this decision.

Issue(s) to be Decided

- Are the tenants entitled to a monetary order, including a rent reduction, and if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence

This fixed term tenancy commenced June 7, 2015. The term of the tenancy ends November 30, 2015. The written tenancy agreement provides that at the end of the fixed term the tenancy ends and the tenants must move out of the rental unit.

The monthly rent of $1425.00 is due on the first day of the month. The tenants paid a security deposit of $700.00.

In addition to water, heat and electricity the rent includes furniture, carpets, window coverings, sheets and towels, and the large kitchen appliances.

The rental unit is one of several living units on the same urban property. The landlords live in the main house and there is a rental unit in the house. There is another rental unit, referred to in this decision as the cottage, located in the back yard. One of its'

features is a deck that abuts the lawn in the back yard. Access to the cottage is across the deck.

The tenants' evidence is that when they went to look at this property they were interested in one of the other units. While they were viewing that unit the landlord said the cottage was also vacant and they might be interested in it. The tenant says they only looked at the cottage quickly. He also testified that he understood that the contents of the cottage belonged to the previous tenant and would be replaced. The landlord testified that no such representation was made.

The next day the tenants went back to the property and were disappointed to discover that the ground floor unit they wanted had been rented to someone else but, because their options were limited, they agreed to rent the cottage. The tenant testified that they did not look at the cottage a second time before agreeing to rent it.

The cottage was not ready to be occupied as some repairs were required. The tenant said they were prepared to wait until the 15th for the repairs. They were pleased that the interior repairs were completed by June 7 and they were able to move in on that date. The repairs to the deck were completed the following week.

On June 7 the tenancy agreement was signed; a move-in inspection was conducted; and a move-in condition inspection report was completed. The tenant said they were not provided a copy of the tenancy agreement or the move-in condition inspection report until they received the landlord's evidence package. The landlord said they were left for the tenant on the counter of the rental unit.

The condition inspection report notes that the carpet in one bedroom is stained and worn; the window covering in the bedroom is not secure; the lower door of the refrigerator was dented; and there is no toaster or kettle. The furniture, which was the same furniture that was in the unit when the tenants looked at it, is noted as satisfactory. The landlord subsequently provided the tenants with a toaster and a kettle.

The tenant says the condition inspection report only records obvious surface issues but later, on closer examination and different lighting, some deficiencies became apparent. The tenant acknowledged that the unit was clean.

The tenants sent the landlord written requests about various deficiencies. They complained that the pots were in very poor condition and all but the smallest were without lids. They also complained about the condition of the towels and the lack of a dish drainer. The tenants filed invoices for a sponge mop - $5.22; towels and bath mat -

$26.28; and a dish drainer - $3.00. The landlord said that the tenant asked for two place mats; a vacuum, mop and cleaning equipment are located in a closet for all the tenants to share; and the unit is equipped with a dishwasher.

The evidence in support of the tenants' claims regarding the towels was a photograph of one worn hand/dish towel. The landlord testified that it did not represent the quality of the towels provided. The tenant testified that the sheets and bedding were adequate.

Both parties filed photographs of some of the kitchenware. The landlord's photographs, which the tenant acknowledged as being accurate, show a variety of kitchen items. Both parties commented on the number of pot lids in that particular photograph.

The tenant argued that furnished accommodation means all furnishing necessary to meet an occupant's day-to-day needs. The landlord testified that kitchenware is provided as a courtesy only. They do not have a contents list because those items are not included in the rent.

The tenant testified that nothing was said about landscaping work planned for the back yard before they agreed to rent the unit. A big part of the project was the installation of a sprinkler system and paving stones near the deck of the rental unit.

The landlord and his son did the work; when they were not working at their own places of employment. As a result, they did not work every day. The landlord testified that when they were working on the backyard they only worked between 10:00 am and 4:00 pm. All of the digging was done by hand and the tenant agreed that the project was not particularly noisy. The whole project took about three weeks and was completed in July.

The landlord testified that they kept a tidy worksite and covered the trenches with plywood when they were not working. The tenant testified that the issue for them was that the only access to the cottage is across the deck so the work made it awkward to enter the unit. In addition, their big windows look out onto the deck and the work resulted in a loss of privacy. The tenant agreed that the end result was very attractive.

The photographs show a small, nicely landscaped yard with a very nice deck and deck furniture at the front of the cottage.

The tenant testified that a big feature of the cottage was large overhead windows. Throughout their tenancy the windows were partially obscured by moss and other

organic material. He raised this issue with the landlord several times and on at least two occasions the landlord said he was going to clean them. That never happened.

There was a long interaction between the landlord and the tenant about providing a telephone connection to the cottage. There was no dispute that internet service is included in the rent. The tenant said he prefers a landlord line and thought a telephone jack was provided in the unit. He proposed a solution which involved a VOIP (voice over internet protocol) company. The landlord ultimately refused based upon information he received from his internet provider. The tenants always had a cell phone.

The tenant testified that the window coverings did not block the light. They had to jury-rig a solution which was not particularly attractive.

At the end of the summer heat became an issue. The cottage has wall-mounted electric heaters. When the tenant moved in he mentioned to the landlord that the living room heater was not working. The landlord had an electrician in. The heater was operational at that time but, according to the landlord, it was hard to gauge how effective it was when the weather was warm. The tenant's submission makes it clear that the heat was not an issue until the weather started to cool at the end of the summer.

On September 3 the landlord provided the tenants with a space heater.

On Thursday, September 24 the tenant complained in writing that the heat in the bathroom and main room were not working. The landlord says he called his electrician on Monday and made arrangements for the electrician to come to the unit on Thursday. On Wednesday evening the tenant delivered a second strongly worded demand for repairs to the heating system. The wall unit was replaced on Thursday. The tenant testified that the issue has been satisfactorily resolved.

The tenant argued that the quality of the furniture was below the standard expected based upon the landlord's representations and the amount of the rent. He submitted photographs of an upholstered chair, a rug, a cupboard, and two bar stools.

At some point during this tenancy the landlord offered to terminate the tenancy agreement. It was not convenient for the tenants to move during the summer so the offer was declined.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

Section 7(1) of the *Residential Tenancy Act* states that if a landlord or a tenant does not comply with the *Act*, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 65(1) allows an arbitrator who has found that a landlord has not complied with the *Act,* regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement. Section 7(2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss. On any claim the onus is on the claimant to establish their claim on a balance of probabilities.

A tenancy agreement is a contract and the parties' obligations are set out in that contract. This tenancy agreement is clear that the rent does not include kitchenware or a telephone connection. Accordingly, those complaints will not be considered in this decision.

I find that the tenants had every opportunity to inspect the unit and its' contents before agreeing to rent it. In particular, there is no evidence that the tenants asked to have a second, more thorough, viewing of the cottage before they agreed to rent it or that such a request, if made, was refused by the landlord.

The furniture rugs and window coverings that the tenants complained about were in the unit when they looked at it, when they agreed to rent it, and when they participated in the move-in inspection. The condition of the furniture was obvious on each of these occasions. The fact that some of the furniture was worn is not only apparent in the photographs filed by the tenant but was recorded on the move-in condition inspection report It is worth noting at this point that section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. I find that the tenants did not rent anything less than what was always on offer.

With regard to the tenants' complaints about the towels the only evidence, other than the contradictory oral testimony of the parties, is one photograph of one towel, presumably the towel in the worst condition. This is not enough to establish, on a balance of probabilities, that all of the towels were in poor condition.

I find that the landlord did respond to the complaints about the heating in a timely and reasonable manner. No award will be made for this issue.

With regard to the windows *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* provides that at the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair. I find that the overhead windows were not clean at the start of this tenancy as required and that this deficiency existed throughout the tenancy.

With regard to the claim for compensation for disruption experienced as a result of the yard work the applicable law is explained both in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment:*

> "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 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.",

and in in *Residential Tenancy Policy Guideline 16: Claims in Damages:*

> "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

I accept the tenants' evidence that the windows represented one of the nice features of this unit and the fact that they were partially obscured during the summer and autumn months when sunlight if most plentiful and most enjoyable did reduce the value of their tenancy. After some consideration I find that unobscured windows represent 2.5% of the value of this tenancy. Accordingly, I award the tenants the sum of $312.78 for this item ($35.63 X 6 months).

The tenants' right of quiet enjoyment was disrupted by the landscaping project in the back yard. This project, from start to finish, lasted about 21 days. The actual time spent in the yard by the landlord and his son was a few hours a day for an unspecified number of days, but certainly much less than the full 21 day period. The presence of construction material and dirt was only for a few days. After considering the extent of the disruption and the length of time for which this disruption existed I find that the value of the tenancy was reduced by 2.5% for one month and I award the tenants the sum of $35.63 for this item.

As the tenancy will be ending soon, no order compelling the landlord to make further repairs or to provide other services or facilities will be made as those issues are no longer relevant.

As the tenants have been minimally successful on this application I find they are entitled to reimbursement of the $50.00 fee they paid to file it.

Conclusion

I find that the tenants have established a total monetary claim of $398.41 comprised of damages as described above and the $50.00 fee paid by the tenants for this application and I grant the tenants an order under section 67 in that amount. If necessary, this order may be filed in the 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: November 10, 2015

Residential Tenancy Branch