



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding First Service Residential BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, RP, RPP, RR, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply with the Act - Section 62;
2. An Order compelling the Landlord to provide services and facilities – Section 65;
3. An Order for repairs – Section 65;
4. An Order for the return of the Tenant’s personal property – Section 67;
5. An Order for a rent reduction – Section 65;
6. A Monetary Order for the cost of repairs – Section 67; and
7. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to retain an existing fence?

Is the Landlord required to provide the Tenant with a gate?

Is the Tenant entitled to have a shed outside the unit?

Is the Tenant entitled to replacement of blinds?

Is the Tenant entitled to repairs to a sliding door and for the existence of mold?

Is the Tenant entitled to compensation for repairs to the flooring?

Is the Tenant entitled to paint color information or samples from the Landlord?

Background and Evidence

The tenancy started on July 1, 2013. Rent of \$1,250.00 was payable monthly at the onset of the tenancy but was reduced to \$1,200.00 starting February 1, 2014.

The Tenant states that the rent was reduced as the Landlord removed a gate from the yard of the unit. The Tenant states that the gate was present when she agreed to rent the unit and she did not agree to its removal. The Tenant states that the presence of the gate was the reason why the Tenant selected this particular unit as the Tenant has children and pets. The Tenant requests the return of the gate and the return of the rent to \$1,250.00.

The Landlord states that no other unit in the complex had a gate and that it was removed in cooperation with the Tenant who agreed to the rent reduction. The Landlord states that it was removed after the fire department carried out an inspection and indicated that the gate could block egress and therefore be unsafe. The Landlord states that the Landlord did not know the Tenant had pets. The Tenant states that the Parties signed the tenancy agreement in the unit while the pets were present and that the Landlord told the Tenant at the time not to worry about the pet deposit. The Tenant states that she had a fire inspector look at the gate and fence in September 2015 and that this person indicated that there was no issue with blocking egress and that the Landlord has never been cited about the gate. The Landlord requested and the Tenant agreed to provide the name of this person to the Landlord by January 5, 2015.

The Tenant states that at the outset of the tenancy the unit came with a small chicken wire fence along the large line of cedars in the back yard. The Tenant states that this fence keeps the pets from getting out of the yard. The Tenant states that the Landlord has told the Tenant to remove the fence or the Landlord will remove the fence at a cost to the Tenant. The Tenant wants the fence to remain. The Tenant states that she carries liability insurance on the rental unit.

The Landlord states that the fence is haphazard and a liability to the Landlord. The Landlord states that the fence was not installed by the Landlord and was likely installed by some other tenant. The Landlord does not know why it was not removed prior to this tenancy.

The Tenant states that within a couple of days of the tenancy the Landlord gave the Tenant permission to have a shed. The Tenant provides an email in relation to the shed from the Landlord. The Tenant states that the Landlord has told the Tenant to remove the shed or that it would be removed by the Landlord at the Tenant's cost. The Tenant asks for an order stopping the landlord from removing the shed.

The Tenant states that at the onset of the tenancy the carpets were noted as stained. The Tenant states that the carpets in the master bedroom and living room stunk. The Tenant asked the Landlord several times to replace the carpet and after not replying for some time the Landlord finally refused to replace the carpet. The Tenant states that she replaced the carpet with other flooring and claims the costs for replacement. The Landlord states that the Tenant rented the unit "as is" and is getting a good rental rate for the unit. The Landlord states that the carpets are original to the unit built sometime in the mid 1980's. The Landlord states that the stains on the carpet were noted on the move-in inspection and the Tenant was satisfied. The Landlord states that the manager was sent to look at the carpets but the Tenant has already removed them. The Landlord argues that the Tenant is not entitled to compensation as the Landlord did not authorize the work. The Landlord states that the tenancy agreement does not allow the Tenant to make any changes or alterations to the unit.

The Tenant withdraws its claim for repair costs for the toilet. The Landlord agreed to inspection the sliding door for moisture or leaks on or before December 19, 2015 and will make any necessary repairs.

The Tenant states that a couple of the slats for the blinds were missing at the outset of the tenancy and the Landlord told the Tenant at move-in that the slats would be

replaced with new one. The Tenant states that when the Landlord came to replace the slats it was discovered that the plastic tabs for the slats were broken and could not be repaired. The Tenant states that it as the window is not fully covered the sun cannot be blocked. The Tenant wants the blinds replaced with comparable window covering. The Landlord states that while it does not dispute that the unit comes with window coverings, the Tenant took the unit "as is" and is not entitled to a replacement of window coverings.

The Landlord agrees to provide the Tenant with a paint color number or paint chip for the correct paint color for the walls of the unit.

In the Interim Decision the Landlord was ordered to inspect the unit for mold and to make any necessary repairs. The Landlord states that the site manager inspected the unit for mold however the Landlord does not know the results of that report.

Analysis

Section 62 of the Act provides that any order necessary to give effect to the rights, obligations and prohibitions under this Act may be made, including an order that a landlord comply with this Act, the regulations or a tenancy agreement, may be made. Section 65 of the Act provides that where a landlord has not complied with a tenancy agreement, past or future rent may be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Based on the Tenant's undisputed evidence that the gate was present at the onset of the tenancy and that its presence was an inducement for the Tenant to enter into the tenancy agreement, I find that the gate is to be provided under the tenancy agreement. Accepting that the Tenant did not agree in the first instance to the removal of the gate and as the Landlord provided no supporting evidence that the gate needed to be removed for safety reasons I find that the Landlord has breached the tenancy agreement by removing the gate. I therefore order the Landlord to return the gate no later than December 31, 2015 and that the rent reverts to \$1,250.00 as of January 1, 2015.

Accepting the Tenant's undisputed evidence that the fence was present at the outset of the tenancy I find that the Tenant is not responsible for its presence and therefore not responsible for either its removal or cost of removal. Given however that the unit was rented to the Tenant with the fence and accepting that the Tenant makes good use of this fence, I find that the Tenant is entitled to retain the fence and that the Landlord may not remove the fence until the tenancy ends or as otherwise mutually agreed in writing by the Parties.

Given the email from the previous manager, I accept that the Tenant was provided with consent to have the shed during the tenancy. Given this acceptance I find that the Landlord now has no basis upon which to have the shed removed and that the Tenant may keep the shed until the end of the tenancy or as otherwise determined by the Tenant.

It is clear from the Tenant photos that the blinds have plastic parts that have simply fallen apart from age and that the Tenant has been left without full window coverage as a result. Given the undisputed evidence that the tenancy agreement includes window coverings, I find that the Tenant has substantiated that the Landlord has failed to provide the Tenant with functional window coverings as promised under the tenancy agreement. I therefore order the Landlord to replace the window coverings no later than December 31, 201 with similar and comparable window coverings. If the Landlord fails to replace the window coverings by this date I find that the Tenant is entitled to a rent reduction of \$50.00 per month until the windows are sufficiently covered by the Landlord.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the evidence of the age of the carpets I accept that the carpets were irreparably stained. Noting that the units have accepted pets, I also accept the Tenant's evidence that the carpets smelled badly. Overall I accept that the

carpets required replacement. However, the Tenant did not obtain the Landlord's permission to replace the flooring nor did the Tenant make an application for dispute resolution to obtain an order that the Landlord make repairs to the carpet or replace the flooring. As a result I find that the Tenant may not now be reimbursed for the cost of installing the flooring and I dismiss this claim. At the same time however, as the carpets required replacement, I find that the Landlord has no claim against the Tenant in the future for any damage to the unit by virtue of the Tenant replacing the carpet with the flooring as the Landlord has been enriched by the Tenant's actions.

The Landlord was ordered to inspect the unit for mold and make necessary repairs. While I accept that an initial inspection took place, the Landlord has failed to provide evidence of the results of this inspection. I therefore order the Landlord to provide a written report to the Tenant on the dates, times and results of the Landlord's inspection no later than December 31, 2015. If mold is present or if the Tenant disputes the results of the inspection, the Tenant has leave to reapply for compensation from the date that the mold was first reported to the Landlord on October 6, 2015.

Given the agreement by the Landlord to inspect and repair the sliding door as necessary and to provide the Tenant with a paint color number or paint chip for the correct paint color for the walls of the unit, I decline to make any orders in relation to the Tenant's rights to either the repairs or the information. Should the Landlord fail to act as agreed however the Tenant has leave to reapply for orders and compensation.

As the Tenant's application has met with success, I find that the Tenant is entitled to recovery of the \$50.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Tenant is entitled to facilities and repairs as set out above.

I grant the Tenant an order under Section 67 of the Act for **\$50.00**. 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 Act.

Dated: December 16, 2015

Residential Tenancy Branch

