



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, MNDC, RR, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause, for more time to make his application, for a monetary award for damage or loss under the *Residential Tenancy Act* (the “RTA”), and for a rent reduction due to a loss of a service or facility or for repairs.

By the date of hearing the tenant had vacated the premises. As a result, the Notice in no longer in question nor the claim for a rent reduction.

Both parties attended the hearing, the landlord by its representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to compensation for repairs or for a loss of a service or facility?

Background and Evidence

The rental unit is a one bedroom unit in a townhouse style complex.

The tenant first moved in June 2014 and continued as a tenant under a series of short fixed term tenancy agreements, each of which required that he vacate the premises at the end of the fixed term. The most recent agreement had a fixed term ending December 31, 2015 however the parties extended it for the month of January.

The rent was \$695.00 per month. The landlord continues to hold a \$347.50 security deposit. The parties agree that the tenant returned the key and provided a written forwarding address to the landlord on the evening of February 1, 2016.

The tenant attended for a move-out inspection but the landlord's representative did not arrive. Apparently the landlord's representative had attended on a different day for the inspection. The landlord's representative Mr.---. indicated it was due to "mix up for whatever reason."

The tenant testifies that his rental unit was not properly heated. He says that the problem only surfaced in November 2015. He states that the furnace did not run at night.

He does not have a control for the heat in his apartment.

He inquired of the landlord but says he received no response.

He says he acquired two portable heaters but the electrical breaker would fail when they were in use, requiring him to wait for the landlord's workmen to reset it.

The landlord's representative, the caretaker Mr. ---. testifies that the heating is provided by a steam generating boiler that services other rental units as well. He says the boiler is on a timer and is not operated by a temperature sensitive thermostat. It goes on about five times a day.

Mr. V. says that the heat issue was only raised in November 2015 and that he dealt with it in a timely fashion.

The landlord's representative Mr. ---. referred to three Notices to Enter. One was for November 24, 2015 to check the heaters. The second was for November 25, 2015, to check and service the heater. It was noted that on that day the tenant was provided an electric heater. The third notice was for December 27, 2015 "to attend to the old fridge in your suite."

The tenant testifies that he discovered mould in his suite. He provided a number of photos indicating the existence of mould growth in the walls behind furniture and behind the toilet. He attempted to bleach clean the spots before he left.

The tenant testifies that there were rats in his rental unit. He states that they appeared in May 2015 and that a prior caretaker advised him to fill possible entry areas with steel wool. The tenant says he did so and that the remedy worked. However, he says that recently a rat found its way in and climbed on him while he slept in a chair and that he saw a rat trying to claw its way in through a baseboard in the bathroom. He produced a number of pictures showing his extensive effort to seal off cracks and holes with steel wool in May 2015.

Mr. --- testifies that the landlord received no complaints about rats until January 6, 2015 in a letter from the tenant.

Mr. ----. testifies that the tenant avoided letting the landlord in to the rental unit. He provide no dates when this occurred and agreed that the tenant had let the landlord's representative in for each of the three notices to enter he had produced.

Analysis

The burden of proof of an allegation initially lies with the party alleging it.

In this case the tenant has not proved on a balance of probabilities that he suffered such a loss of heating as to justify an award of damages.

There is no indication of how cold the suite was during the times of no heat. The tenant offered up no history of dates or temperatures or other indicators from which it might be concluded that the landlord was not providing adequate heat. Without such objective evidence, the phrase "too cold" is of little help. Too cold for one may be too hot or just right for another.

I must dismiss this item of the claim.

There is good evidence of the existence of mould on the walls of this rental unit. It appears to be mould commensurate with cold areas where there is no air flow; particularly, behind furniture against walls.

Had this tenancy continued it may have been appropriate to direct the landlord to take steps to remediate it. However, as the tenant has left, such an order would not be appropriate.

The question then is whether or not the tenant has suffered some inconvenience as a result. I find that he has not suffered any particular inconvenience or loss as the result

of the mould as the discovery of it came just at the end of his tenancy. His cleaning of some small places where there was mould I consider to part of his general cleaning in preparation for his move-out. I therefore decline to grant any monetary award for this item.

Similarly, I decline to grant any award for the possible presence of rats in the rental unit in the last few weeks of this tenancy. This rental unit is obviously very old. It is not out of the ordinary that vermin might find their way into such a building. It is the tenant's responsibility to report the incursion to his landlord. It is then the landlord's responsibility to attend in a timely manner and investigate the complaint and take steps warranted by that investigation. If a landlord fails to do so it may expose itself to a repair order and possibly a monetary award against it.

In this case, the tenant informed the landlord of the vermin on January 6, 2016. As his possession of the rental unit was ending at the end of the January, the landlord cannot be faulted for holding off investigating the vermin complaint until then.

It should be noted that the tenant has not made a claim for return of deposit money with this application. He is free to do so.

As well, the landlord presented evidence in support of its costs to clean and repair the premises after the tenant left. In order to pursue such a claim, the landlord must make its own application for dispute resolution. It is free to do so.

Conclusion

The tenant's application is dismissed.

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: March 09, 2016

Residential Tenancy Branch

