Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 03, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On October 21, 2015 the Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that these documents were sent to the Tenant, via registered mail, on October 18, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 23, 2016 the Tenant submitted documents to the Residential Tenancy Branch. The Tenant stated that these documents were sent to the Landlord, via registered mail, in March of 2016. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulate that once an Application for Dispute Resolution has been served on the other party it may be amended by serving the other party with an amended Application at least 14 days before the scheduled date for dispute resolution hearing. The rule further stipulates that the amended application must be clearly identified, and be provided separately from all other documents.

In the Application for Dispute Resolution, filed on October 01, 2015, the Tenant applied for a monetary Order of $750.00. I find that the Tenant has not properly increase the amount of her monetary claim as she did not serve the Landlord with an Amendment to an Application for Dispute Resolution. Rather, the Tenant simply served the Landlord with a Monetary Order Worksheet that indicates she is claiming an additional $39.24 for hydro. As the Tenant did not properly amend the Application for Dispute Resolution I decline to consider any claims other than the original claim of $750.00 which was made in the original Application for Dispute Resolution.

Issue(s) to be Decided:

Is the Tenant entitled to a rent refund of $750.00?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on December 01, 2011;
- the rental unit is a small bachelor unit, approximately 350 square feet in size;
- the Tenant paid the rent of $750.00 for October of 2013;
- on October 02, 2013 the Tenant reported that water was leaking into the unit;
- on October 03, 2013 the Landlord went to the rental unit and noticed water leaking into the unit;
- after viewing the leak the Landlord informed the Tenant that a third party would make arrangements to repair the leak;
- the source of the water leaking into the rental unit was somewhere outside of the unit, although neither party is certain of where the water originated;
- on October 07, 2013 the parties signed a mutual agreement to end the tenancy on October 31, 2013; and
- the Tenant had moved all of her personal property from the rental unit by October 30, 2013.

The Tenant stated that:

- when she first noticed the leak it was a small trickle in the closet;
- the water leaked behind the drywall and pooled on the carpet in front of the closet;
- within a few days she was soaking up water with towels every 30 minutes;
- on October 05, 2013 a plumber came to the rental unit and cut a hole in the drywall, at which point he confirmed water was leaking into the rental unit;
- on October 06, 2013 the water stopped leaking into the rental unit;
- on October 06, 2013 a restoration company placed two fans and a dehumidifier in the rental unit for the purposes of drying the rental unit;
- the restoration company told her that she should run the fans and dehumidifier at all times and to keep the windows closed to facilitate the drying process;
- she moved most of her larger furniture out of the rental unit on October 06, 2013;

- she did not live in the rental unit after October 06, 2013;
- she did not live in the rental unit after October 06, 2013, in large part because the fans and dehumidifier made it impractical to remain living in the unit, given the size of the unit;
- on, or about, October 07, 2013 she contacted the restoration company and told them they can contact the Landlord directly when they wish to enter the rental unit and that she no longer needed notice of their intent to enter;
- when she finished moving her personal property on October 30, 2013 the fans and dehumidifier were still in the rental unit; and
- as a result of the leak she was unable to use her rental unit for the purpose it was intended.

The Landlord stated that:

- the drywall in the unit was repaired and painted sometime in November of 2013;
- he does not believe the Tenant is entitled to a rent refund, in part, because she could have stayed in the rental unit for the month of October and simply turned off the fans and dehumidifier when she was home;
- he did not have any direct contact with the restoration company;
- he does not believe the Tenant is entitled to a rent refund, in part, because she asked to be notified when the restoration company would be entering the unit, which delayed repairs;
- he did not give the Tenant notice that the rental unit would be entered after October 07, 2013;
- he does not know if the restoration company gave the Tenant notice that the rental unit would be entered after October 07, 2013; and
- he does not believe the Tenant is entitled to a rent refund, in part, because only a very small area of the carpet was damp.

The Tenant submitted photographs of the rental unit that were taken at various stages of the tenancy.

Analysis:

On the basis of the undisputed evidence, I find that water leaked into the rental unit on, or about October 02, 2013 and that neither party was responsible for the leak.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, the right to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6, with which I concur, stipulates that "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."

On the basis of the undisputed evidence I find that water continued to leak into the rental unit until October 06, 2013, at which point a restoration company stopped the leak, began drying the unit, and eventually repaired the drywall damaged as a result of the leak. On the basis of the testimony of the Landlord and the absence of evidence to the contrary, I find that the drywall was not repaired and painted until sometime in November of 2013.

As the Tenant was living in the rental unit for the first 6 days of October of 2013, I find that she was obligated to pay pro-rated rent for that period. Pro-rated rent for 6 days, at a per diem rate of $24.19, is $145.14.

I find that the Tenant's right to the quiet enjoyment of the rental unit for the first 6 days in October of 2013 was impacted, to some degree, by the need to empty the close and to frequently dry the carpet in the area of the closet. I find that this reduced the value of her tenancy for those 6 days by $50.00 and I therefore find that she is entitled to a rent refund of $50.00 for those days.

On the basis of the testimony of the Tenant I find that the leak impacted her quiet enjoyment of the rental unit after October 06, 2013 because it was no longer practical to sleep in the rental unit, in part, because she had to move her bed to facilitate the repairs and, in part, due to the fans and dehumidifier operating in the unit.

While it may have been physically possible to sleep in the unit after October 06, 2013, I find it would have been highly disruptive for the Tenant, given that the unit is approximately 350 square feet and she would have had to move her bed into the area she refers to as the living area.

While it may have been physically possible to continue living in the unit after October 06, 2013, I find that the fans and dehumidifier in this small space would have been extremely disruptive.

In adjudicating this matter I have placed little weight on the Landlord's submission that the Tenant could have turned off the dehumidifier and fans while she was in the rental unit. I have placed little weight on this submission because:

- there is no documentary evidence that refutes the Tenant's testimony that the restoration company told her to leave the dehumidifier/fans running at all times;
- there is no documentary evidence that supports the Landlord's submission that it would have been reasonable for the Tenant to turn off the dehumidifier/fans while she was home; and
- it seems logical to conclude that turning off the dehumidifier/fans while the Tenant was at home would have significantly extended the amount of time it took

to dry the rental unit.

In adjudicating this matter I have placed little weight on the Landlord's submission that the Tenant could have continued living in the rental unit because only a small amount of the carpet was wet. I have placed little weight on this submission because this rental unit is a small unit and having to move her property from the closet and the area in front of the closet to other areas in the unit would have significantly impacted her quality of life while the area was drying and the repairs were being completed.

I find that the leak in the rental unit significantly impacted the Tenant's ability to live in the rental unit after October 06, 2013 and I find it reasonable that she did not live in the unit after October 06, 2013. I find that this reduced the value of her tenancy for that period by $500.00 and I therefore find that she is entitled to a rent refund of $500.00 for those days.

I have not granted the Tenant a full rent refund for the period between October 06, 2013 and October 31, 2013, because she did not fully vacate the rental unit. Rather the parties mutually agreed to end the tenancy on October 31, 2013, which allowed the Tenant an abundance of time to pack her belongings and temporarily store them in the rental unit. As the Tenant obtained some benefit from the rental unit for the period between October 06, 2013 and October 31, 2013, I find that she was obligated to a full rent refund for that period.

In adjudicating this matter I have placed no weight on the Landlord's submission that the Tenant delayed repairs by insisting that the restoration company give her notice of their intent to enter the rental unit. I have placed no weight on this submission because:

- the Landlord submitted no evidence to corroborate his testimony that the need to give notice delayed the repairs on any specific date;
- the Landlord submitted no evidence to refute the Tenant's testimony that after October 06, 2013 the Tenant informed the restoration company that notice to enter was not required; and
- even if the Tenant did require notice to enter the unit, it was her legal right to do so.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $600.00, which is comprised of a rent refund of $550.00 and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be 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: April 15, 2016

Residential Tenancy Branch