Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On December 07, 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, 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 December 10, 2015 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the Respondent, who is the male Tenant, via registered mail. He stated that this evidence was returned by Canada Post as unclaimed. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act*).

The Landlord stated that on February 19, 2016 the Landlord's Application for Dispute Resolution, the Notice of Hearing with the Application were sent to the Respondent, who is the male Tenant, via registered mail. The female Applicant stated that she accepted these documents on behalf of the male Tenant and that she is acting on behalf of the male Tenant at these proceedings.

The Landlord stated that on February 19, 2016 a copy of the tenancy agreement was also sent to the Respondent, who is the male Tenant, via registered mail. The female Applicant stated that the tenancy agreement was not received with the documents served by the Landlord on February 19, 2016. As the tenancy agreement served by the Landlord is the same as the tenancy agreement submitted in evidence by the Tenant, I accept the tenancy agreement as evidence for these proceedings.

On May 13, 2016 the Tenant and female Applicant filed an Application for Dispute Resolution, in which they applied for a monetary Order for money owed or compensation for damage or loss, for the return of all or part of the security deposit, for "other", and to recover the fee for filing this Application for Dispute Resolution.

The female Applicant stated that sometime in May of 2016 the Tenant's Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted with the Application were personally delivered to a female at the Landlord's place of residence. The Landlord acknowledged receipt of these documents on behalf of him and the other person named as a Respondent in the Tenant's Application for Dispute Resolution, and they were accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue?
Is the Tenant entitled to compensation for deficiencies with the rental unit and for bank fees?
Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on October 15, 2013;
- the rental unit included a suite in the basement, which had kitchen facilities;
- the rental unit had a total of 8 bedrooms, 3 of which were in the lower suite;
- the tenancy was a fixed term tenancy, the fixed term of which ended on October 01, 2015;
- the tenancy was to continue on a month-to-month basis after the end of the fixed term of the tenancy;
- the tenancy agreement named the Respondent in the Landlord's Application for Dispute Resolution as the tenant of the rental unit, whom I shall refer to as the Tenant;
- the tenancy agreement named the female Applicant in the Tenant's Application for Dispute Resolution as an occupant in the rental unit, whom I shall refer to as the female Applicant;
- the Tenant agreed to pay monthly rent of $3,800.00 by the first day of each month;
- the Tenant paid a security deposit of $1,900.00;
- no rent was paid for November of 2015; and
- the female Applicant provided a forwarding address for the Tenant, in writing, on November 13, 2015.

The Landlord stated that on November 05, 2015 the female Applicant informed the Landlord that the rental unit had been vacated and that on November 06, 2015 he confirmed the rental unit had been vacated.

The female Applicant stated that the Tenant did not give written notice to the Landlord in which he informed the Landlord that the tenancy would end on any particular date. She stated that she did send some text messages to the Landlord in which she made reference to ending the tenancy, although she did not specify an end date and she did not submit those messages in evidence. The Landlord stated that prior to November 05, 2015 the Tenant never informed him of his intent to end the tenancy by text message.

The Landlord is seeking compensation of $3,800.00 for unpaid rent from November of 2015 and $3,800.00 for lost revenue from December of 2015. The Landlord stated that the rental unit was advertised on a popular website shortly after the rental unit was vacated and that a new tenant was located for January 15, 2016.

The Tenant is seeking compensation of $3,800.00 for delays in repairing the bathtub, the kitchen sink, the dishwasher, the stove, and a hot water tank.

The female Applicant stated that the bathtub tap started dripping and that the deficiency was reported to the Landlord in May of 2015, but was never repaired. The Landlord stated that the problem with the bathtub was reported in May of 2015 and the problem was repaired about 3 days after it was reported.

The female Applicant stated that the kitchen sink started leaking and that the deficiency was reported to the Landlord in May of 2015, but was never repaired. The Landlord stated that the problem with the sink was reported in May of 2015 and the problem was repaired about 3 days after it was reported.

The female Applicant stated that the dishwasher “buttons fell off” and that they had to operate the dishwasher with a screw driver. She stated that the problem was reported to the Landlord sometime in December of 2013 and was not repaired until sometime in April of 2014.

The Landlord stated that the problem with the dishwasher was reported sometime in December of 2013 and that it was repaired in January or February of 2014. He stated that there was a delay in repairing the dishwasher because they were waiting for parts.

The female Applicant stated that the oven and two stove elements did not work for a period of time. She stated that the problem was reported to the Landlord sometime in December of 2013 and was not repaired until sometime in April of 2014.

The Landlord stated that the problem with the oven/stove was reported sometime in December of 2013 and that it was repaired in January or February of 2014. He stated that there was a delay in repairing the stove because they were waiting for parts.

The female Applicant stated that there were two water heaters in the rental unit at the start of the tenancy; that one water heater started to leak; the problem was reported to the Landlord in May of 2015; and the leaking water heater was removed in May of 2015, leaving them with one water heater.

The Landlord stated that the hot water heater was removed shortly after it was reported in April of 2015. He stated that the second hot water heater was originally installed because there was a basement suite and the plumber determined that two water heaters were not necessary since the rental unit was being used as a single family dwelling.

The Tenant is seeking $1,500.00 for being unable to use the suite in the lower portion of the rental unit for a period of time. The Landlord and the Tenant agree that the Tenant could not use the lower portion of the rental unit for a period of time as a result of a flood.

The female Applicant stated that the lower portion of the rental unit was flooded sometime near the beginning of April of 2015 and repairs were not completed until sometime near the end of May of 2015. The Landlord stated that the lower portion of the rental unit was flooded sometime on, or about, April 17, 2015 and repairs were completed in the third week of May of 2015.

The Landlord and the Tenant agree that the Landlord allowed the Tenant to reduce one rent payment by $1,300.00 in compensation for housing guests in a hotel while the lower portion of the suite was flooded.

The Tenant is seeking $60.00 for two bank fees they incurred as a result of the Landlord cashing two rent cheques they had been asked not to cash. The Landlord agreed to compensate the Tenant for these fees.

Analysis

On the basis of the undisputed evidence I find that the Tenant agreed to pay monthly rent of $3,800.00 by the first day of each month and that he has not paid the rent that was due on November 01, 2015.

On the basis of the undisputed evidence I find that the rental unit had not been vacated by November 01, 2015. As the Tenant was occupying the rental unit on November 01, 2015, I find that he was obligated to pay rent of $3,800.00 on November 01, 2015, pursuant to section 26 of the *Act*. As rent for November has not been paid I find that the Tenant owes the Landlord $3,800.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 45 of the *Act* when the Tenant failed to provide the Landlord with written notice of his 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 November 30, 2015 in accordance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, October 31, 2015.

I find that the Landlord made reasonable efforts to locate a new tenant for December but, in spite of those efforts, was unable to find a new tenant for that month. In spite of the efforts to mitigate their loss, I find that the Landlord suffered a loss of revenue for the month of December of 2015 that the Landlord would not have experienced if the Tenant remained in the rental unit or may not have experienced if he had received proper notice. I therefore find that the Landlord is entitled to compensation for lost revenue from the month of December of 2015.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy that required the Tenant to vacate at the end of the fixed term, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant vacated the rental unit. I find that I have insufficient evidence to determine whether the rental unit was vacated on November 02, 2015, as the female Applicant contends, or on November 06, 2015, as the Landlord contents. On the basis of the testimony I am satisfied, however, that the tenancy had ended by November 06, 2015, pursuant to section 44(1)(d) of the *Act.*

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

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 or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence 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 December 07, 2015. I find that more than 15 days had passed between the time the date the tenancy ended on November 06, 2015, the date the forwarding address was received on November 13, 2015, and the date the Application was filed on December 07, 2015.

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 Tenant double the security deposit.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord did not repair the bathtub tap and/or kitchen sink within a reasonable amount of time of receiving a report of the problem. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the female Applicant's testimony that the problems were never repaired or that refutes the Landlord's testimony that the problems were repaired within three days of the report. As there is insufficient evidence to show that the bathtub tap and the kitchen sink were in a state of disrepair for an extended period of time, I find that the Tenant is not entitled to compensation for these deficiencies.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility that is a material term of the tenancy or is essential for use of the rental unit as living accommodations. The definition of service or facility in the *Act* includes appliances. Section 27(2) of the *Act* stipulates that if a landlord terminates or restricts a service or facility, the landlord must reduce the rent by an amount that is equivalent to the reduced value of the tenancy arising from the termination or restriction.

On the basis of the undisputed evidence, I find that there was a problem with the dishwasher in late 2013 and early 2014. Although there was a delay in repairing the dishwasher, which constitutes a temporary restriction of a service or facility, I find that the Tenant is not entitled to compensation for the delay. In reaching this conclusion I was heavily influenced by the female Applicant's testimony that the dishwasher could be used with the aid of a screw driver. I find that although using a screw driver would be a

minor inconvenience, the dishwasher could still be used for its intended purpose and that this temporary inconvenience did not significantly reduce the value of the tenancy.

On the basis of the undisputed evidence I find that there was a problem with the oven and two stove elements in late 2013 and early 2014. Even though the delay in repairing the stove appears to have been beyond the control of the Landlord, I find that the problem with the stove constitutes a temporary restriction of a service or facility for which the Tenant is entitled to compensation.

I find that being unable to use an oven and two stove burners reduced the value of the tenancy by $50.00 per month. As the Landlord estimated the stove was in a state of disrepair for approximately two months, I grant the Tenant compensation of $100.00 for the problem with the stove. I decline to consider compensation for more than two months for the stove as the Tenant has submitted insufficient evidence to corroborate the female Applicant's estimate that the stove was in a state of disrepair for approximately five months or to refute the Landlord's estimate that it was in a state of disrepair for approximately two months.

Determining the amount of compensation due as a result of a restriction of a service or facility is highly subjective. I find that $50.00 per month is reasonable in these circumstances because there were two stoves in this rental unit and two of the stove elements worked on the malfunctioning stove.

On the basis of the undisputed evidence I find that one of two hot water tanks was removed from the rental unit in April of 2015 and was never replaced. I find that the removal of the hot water tank does not constitute a restriction of a service or facility, as there is no evidence to show that the remaining hot water tank was unable to provide a reasonable amount of hot water for a single family dwelling. I therefore find that the Tenant is not entitled to compensation for being without a second hot water tank.

On the basis of the undisputed evidence I find that there was a flood in the basement that prevented the Tenant from using the lower portion of the rental unit for a period of time.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch Policy Guideline #6, with which I concur, suggests that it is necessary to balance a tenant's right to quiet enjoyment with a 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. Although the Landlord acted reasonably and responsibly when repairing

the damage arising from the flood in the lower portion of the rental unit, I find that the Tenant is entitled to compensation for being unable to use that area.

I find that the Tenant is entitled to compensation of $356.25 per week, which is approximately 3/8 of the monthly rent, for the time they were unable to use the lower portion of the rental unit. This calculation is based on the evidence that this rental unit has 8 bedrooms and the Tenant was prevented from using 3 of the bedrooms during the flood.

As the Landlord estimated the lower portion of the rental unit was unusable for a period of approximately five weeks, I find the Tenant is entitled to compensation of $1,871.25 for being unable to use that area for approximately five weeks. I decline to consider compensation for more than five weeks as the Tenant has submitted insufficient evidence to corroborate the female Applicant's estimate that the lower area was unusable for more than five weeks or refute the Landlord's estimate that it was repaired after approximately five weeks.

As the Landlord has already agreed to permit the Tenant to reduce one rent payment by $1,300.00 in compensation for the flood in the lower portion of the rental unit, I find that the Landlord must pay the Tenant $571.25 in compensation for the flood.

As the Landlord agreed to compensate the Tenant for $60.00 in banking fees, I grant this amount to the Tenant.

I find that the Landlord's Application for Dispute Resolution and the Tenant's Application both have merit and that they are, therefore, each responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $7,600.00, for lost revenue and unpaid rent.

The Tenant has established a monetary claim, in the amount of $4,531.25, which includes double the security deposit, $100.00 in compensation for being without a fully functional stove for approximately two months, $571.25 in compensation for the flood in the lower portion of the rental unit; and $60.00 for bank fees.

After offsetting the two monetary claims, I grant the Landlord a monetary Order for $3,068.75. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This monetary Order names only the single Respondent and the single Applicant named on the Landlord's Application for Dispute Resolution, as the Landlord only applied for a monetary Order naming the Tenant.

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: June 01, 2016

Residential Tenancy Branch