



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNR, CNL, MNDC, OLC, ERP, RP, OPR, MNR, MNDC, MNSD, SS, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant applied on January 13, 2016 for:

1. An Order cancelling two notices to end tenancy - Sections 46 and 49;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply - Section 62; and
4. An Order for emergency and other repairs - Section 72.
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on February 5, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38;
5. An Order for substituted service – Section 71; and
6. An Order to recover the filing fee for this application - Section 72.

Both Parties appeared and provided sworn testimony. The Parties confirmed that the Tenants have moved out of the unit and that the Landlord no longer requires an order of possession. The Landlord also confirmed that they are no longer seeking an order for substituted service. As the Tenants have moved out of the unit I find that the tenancy

has ended and as the Tenants' claims, other than the claim for compensation, are only in relation to an ongoing tenancy I dismiss these claims. The Tenants claim is reduced to the claim for compensation only.

It was noted that both Parties submitted late evidence packages and both Parties agreed at the hearing that they accepted each other's evidence packages.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on July 1, 2014 and a second tenancy agreement was signed on July 1, 2015 on a fixed term to end June 30, 2016. Rent of \$2,300.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,150.00 as a security deposit and the Landlord states that they also collected \$500.00 as a pet deposit. No move-in condition inspection or report was done.

On January 12, 2016 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent with an effective move out date of January 27, 2016. The Tenants moved out of the unit on January 31, 2016.

The Landlord states that no rent was paid for September 2015 and for January 2016 and the Landlord claims \$4,600.00. The Tenant states that rents for September 2015 were not paid as the Landlord agreed that the Tenant was owed this amount for work done to the unit. The Tenant states that the Parties had been in negotiations for work done to the unit by the Tenant and that in December 2015 the Landlord agreed that the non-payment of September 2015 rent compensated the Tenants for work done up to and during September 2015. The Tenant states that the Landlord never asked for the payment of this rent since. The Tenant does not dispute that January 2016 rent has not

been paid. The Landlord states that they continuously asked for payment of September 2015 rent and refers to the email dated September 21, 2015.

The Landlord states that the unit has not yet been advertised for rent as they were waiting for this hearing and because the unit has not yet been cleaned. The Landlord claims foreseeable lost rental income and cleaning costs of \$2,300.00.

The Tenant states that the unit was infested with rats and that the Landlord failed to have a pest control company attend other than once in July 2014 despite repeated requests from the Tenants that the company re-attend the unit due to the continued presence of rats.

The Parties agree that after being informed of the presence of rats in the crawlspace the Tenant would cover the holes and clean up the rats. The Tenant submissions indicate that between July and September 2014 rats were present while holes were being identified and repaired by the Tenant. The Tenant states that vents and ducts that the Tenant also tried to cover were not properly secured and casually wrapped. The Tenant states that the rats lived in these vents and ducts. The Tenant estimates 10 hours of work cleaning the droppings over the tenancy and 20 to 30 hours cleaning up dead rats. The Tenants claim \$1,250.00 for the costs of cleaning up after the rats. It is noted that the Landlord's evidence package includes an email from the Tenants dated December 18, 2014 asking for the attendance of the pest control and another dated December 29, 2014 again reporting dead rats, asking for pest control and offering to repairs holes in crawlspace. It is noted that page 21 of a Report of an Inspection conducted February 1, 2016 and submitted by the Tenant notes that the crawlspace "appeared to be completely infested with rats".

The Landlord that the Tenants never provided any invoice or accounting of work done and the Landlord does not know if the repairs were ever done. The Landlord states that they did not agree to any payment for the presence of the rats. The Landlord states that the pest company did find a few holes in December 2014 but that none of the bait left

was touched in January 2015 and that at this point the holes were not covered. The Landlord states that he has invoices from the pest company but did not provide them as evidence. The Landlord states that they do not believe rats were present as there had been no rats reported by previous tenants in the past 20 years. The Landlord states that they do not believe the amount being claimed by the Tenants is fair as they only said that some droppings were present at the beginning and there is no evidence to support any other work done. The Tenant states that the Landlord has never been invoiced for work done by the Tenant and have still paid for this work.

The Tenants claim \$4,750.00 for the costs of heating the unit. The Tenant states that a graph submitted as evidence shows that they were paying twice as much in heating costs as other similar houses. The Tenant states that the graph came from BC Hydro. The Tenant states that his claimed amount is derived from an estimated amount of \$391.00 per month for a period of 12 winter months (October to March inclusive). The Tenant states that the true costs are contained in utility bills that were not provided as evidence and that the true costs claimed should have been \$700.00 to \$800.00 per month.

The Landlord states that for the winter months over 2014 and 2015 the Tenant sent a graph showing monthly bills of \$800.00 for a period when they had no fireplace. The Landlord states that the Landlord refunded the Tenants \$200.00 each month for 5 or 6 months for the loss of use of the fireplace. The Landlord states that the Tenants never asked for more compensation after this and never said anything about heating bills being too high. The Landlord states that that fireplace was repaired for the spring of 2015. The Landlord asks why the Tenants would renew the lease if the bills were so high. The Landlord asks why the Tenant's evidence of usage for the winter months in 2015 and 2016 are at \$2,000.00 per month when previous year they were only \$800.00 per month.

The Tenant states that the Landlord did compensate the Tenants for the loss of the fireplace but only for 3 months. The Tenant states that they made it clear throughout

the tenancy that there were problems with the heat. The Tenant states that they signed a second term as they relied on the Landlord's promises to sell the house to the Tenants.

The Tenants claim \$19,000.00 for loss of quiet enjoyment of the unit. This amount is based on \$1,000.00 per month for 19 months of the tenancy. The Tenant provides a submission that sets out a timeline of issues throughout the tenancy. The timeline also includes the time taken for items to be repaired.

The Tenants states that the unit used excessive amounts of heat that are out of the ordinary compared to other similar units. The Tenant states that at the outset of the tenancy the Parties discussed changing the heating system as it required replacement. The Tenant states that a new electrical furnace was installed in July but nobody checked to insure that it would work. The Tenant states that it was not used until October and that within 2 weeks it stopped working. The Tenant states that when the furnace was originally installed 2 of the ducts were not been connected. The Tenant states that the problem was not resolved until December. The Tenant states that in addition to the loss of heat from the furnace, the windows in the unit were not sealed, the back rooms would not heat as the thermostat did not read the rooms from where it was located, there was improper insulation and the Tenants lost use of the fireplace as a method to heat the unit.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that January 2015 rent was not paid I find that the Landlord has substantiated unpaid rent of **\$2,300.00**. The Landlord has not disputed that there was an agreement with the Tenant to make repairs to the unit during the tenancy. The details of that agreement are vague to non-existent however given that the Landlord did not pursue unpaid rent for September 2015 until several months passed, I find that the Tenant has substantiated

that there was an implied agreement for this rent to compensate the Tenant for work done to the unit to this point in time. As a result I dismiss the Landlord's claim for unpaid September 2015 rent.

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. As the Landlord provided no evidence that the Tenant did anything to cause lost rental income and as no costs for cleaning have been incurred or estimates provided, I find that the Landlord has not substantiated these claims and I dismiss them.

The Tenants were required under the tenancy agreement to pay for heat. The Tenants have not provided any evidence that the heating costs to the unit were high due to any act of the Landlord other than through the loss of use of the fireplace and I note that there was some compensation provided to the Tenants for this loss. As a result I find that the Tenants have not substantiated on a balance of probabilities that the Landlord breached the tenancy agreement or act and I dismiss the claim for heating costs.

Section 32 of the Act provides that a landlord must 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. Even if the Landlord had a pest control company attend the unit a second time in December 2014, the evidence shows that the Tenants continued to report rats and that there was an infestation at the end of the tenancy. There is sufficient supporting evidence from both Parties that the Landlord was informed of the presence of rats throughout the tenancy. Given the undisputed evidence of the agreement that the Tenants would clean up the rats, accepting the Tenant's persuasive evidence that they did clean up the rats over the term of the tenancy, considering the description of the presence of rats at the end of the tenancy in the Inspection Report as an "infestation" and given the length of the tenancy,

I find that the Tenants are entitled to the reasonable compensation claimed of **\$1,250.00**.

Regardless of the negotiations over the sale of the unit, the Landlord has obligations to provide and maintain a rental unit and to provide the Tenants with quiet enjoyment of the rental unit. The Tenants submissions in relation to the claim for loss of enjoyment sets out deficiencies however there is little to distinguish the repairs agreed to be done by the Tenant and repairs done or not done by the Landlord that were not part of the repairs agreed to be done by the Tenant. It also appears to me that the several issues set out by the Tenants were set aside during the tenancy in the interests of reaching a negotiated sale of the unit which ultimately failed. There is little to indicate that the Landlord was informed of the deficiencies or that requests were made to the Landlord to repair the deficiencies which also may or may not have been part of the agreements for work done by the Tenant.

It is clear that the Tenants had to endure the presence of rats and that the Landlord was informed. I also accept that the Landlord was asked to remedy the problem during the winter months of 2015. Although the Landlord states that they did not agree to compensate the Tenants for the presence of the rats, the Landlord has an obligation to maintain a unit free of an infestation and there is no evidence that the Tenants caused the infestation. Considering the presence of rats to be a significant disturbance and in light of the amount of rent being paid, I find that the Tenants have substantiated a nominal and reasonably proportionate amount of \$300.00 per month for the presence of rats over the duration of the tenancy (18 months). I find therefore that the Tenants have substantiated compensation of **\$5,400.00** for the loss of enjoyment caused by the presence of the rats. The Tenants have already been compensated for the loss of the fireplace as set out above.

While I accept that the Tenants did go without a furnace for approximately 4 months, I consider that this loss worked to reduce the Tenants costs to heat the unit. There is

little else that can be discerned as a loss from the Tenants' submissions and I therefore dismiss the Tenants remaining claim for loss of enjoyment of the unit.

As both Parties' applications have met with success and as each Party paid the same amount for filing fees I find that the recovery of the filing fees cancel each other out.

The Landlord has been found entitled to **\$2,300.00**. Deducting the combined security and pet deposit plus zero interest in the amount of **\$1,650.00** leaves **\$650.00** owed by the Tenants. The Tenants have been found entitled to **\$6,650.00**. Deducting the **\$650.00** from this amount leaves **\$6,000.00** owed by the Landlord to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$6,000.00**. 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 *Residential Tenancy Act*.

Dated: June 24, 2016

Residential Tenancy Branch