Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, RP, OLC, PSF, LRE, RR, and FF

Introduction

This hearing was scheduled in response to cross applications.

The male Tenant filed an Application for Dispute Resolution, in which he applied:

- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlords to make repairs to the rental unit;
- for an Order requiring the Landlords to provide services or facilities;
- for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- for an Order suspending or setting conditions on the Landlords' right to enter the rental unit;
- for authority to reduce the rent; and
- to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on June 03, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence he submitted with the Application were sent to each Landlord, via registered mail, at the service address noted on the Application. The Tenant cited two tracking numbers that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act;* however neither Landlord appeared at the hearing.

The Tenant stated that the Tenants intend to vacate the rental unit and he therefore withdrew the application for an Order requiring the Landlords to make repairs to the rental unit; for an Order requiring the Landlords to provide services or facilities; for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order suspending or setting conditions on the Landlords' right to enter the rental unit; and for authority to reduce the rent.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, to end the tenancy early, for a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution. The

Tenant stated that he was not aware the Landlords had filed an Application for Dispute Resolution.

Preliminary Matter

As the Landlords did not appear at the hearing in support of their Application for Dispute Resolution, I find that they failed to diligently pursue the Application and I dismiss their Application without leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a monetary Order?

Background and Evidence

The Tenant stated that:

- this tenancy began on December 03, 2015;
- the residential complex is shared with other occupants, who rent the unit under separate tenancy agreements;
- the Tenants are moving out of the rental unit today;
- the Tenants agreed to pay monthly rent of $700.00 by the first day of each month; and
- the Tenants paid an additional $700.00 in December of 2015, which was a deposit he refers to as “last month’s rent” .

The Tenant is seeking $3,133.00 for maintenance work he completed at the rental unit and for the time he spent stoking the wood furnace. In support of this claim the Tenant stated that:

- the residential complex had a “dual service system” for heat;
- there was a wood burning furnace that supplemented the electric furnace;
- when the tenancy began he was designated as the person responsible for stoking the wood burning furnace and maintenance at the property;
- he kept wood burning furnace running throughout his tenancy and did a variety of repairs and maintenance at the property;
- when the tenancy began the Landlord indicated he would be compensated for his labour;
- the Landlord never explained how the Tenant would be compensated for his labour; and
- he was never compensated for his labour.

The Tenant is seeking a rent refund of $4,200.00 for the rent that paid between December of 2015 and April of 2016, which includes the “last month’s rent” of $700.00, that was paid in December.

The Tenant is seeking compensation, in part, because of the Landlords interfered with their ability to use the electric heat. In support of this claim the Tenant contends that:

- the Tenants did not have control over the electric heat in their rental unit, as the thermostat was located in an area of the residential complex that they did not have access to;
- the thermostat was set to 16 degrees;
- if the occupant who had access to the thermostat increased the temperature past 16 degrees the Landlord would reduce it back to 16 degrees;
- on March 20, 2016 and February 02, 2016 the Tenants returned home to find that the Landlord had turned the electric furnace off;
- the Tenants were able to turn the furnace on again on those two occasions, but it took some time to heat the house;
- on April 03, 2016 the Landlord turned the electric furnace off;
- the Tenants were unable to turn the electric furnace on after April 03, 2016 as the Landlords took the key to the furnace room;
- on April 16, 2016 the Landlord turned the electric furnace back on;
- on April 17, 2016 the Landlord turned the electric furnace off;
- on April 23, 2016 the Landlord turned the electric furnace back on;
- on April 24, 2016 the Landlord turned the electric furnace off; and
- on April 25, 2016 another occupant of the residential property turned the furnace back on.

The Tenant is seeking compensation, in part, because the Landlords interfered with their ability to use the water. In support of this claim the Tenant contends that:

- the residential complex is serviced by a well;
- the Landlords turned off the entire water supply to the residential complex on April 31, 2016
- the water was turned on by another occupant to the residential complex on May 03, 2016;
- the Landlords turned off the off the entire water supply to the residential complex on May 06, 2016;
- the water was turned on by another occupant to the residential complex on May 07, 2016;
- the Landlords turned off the system that provides drinking water to the residential complex on May 15, 2016;
- drinking water has not been supplied since May 14, 2016; and
- the Tenants are buying drinking water and transporting it to the unit.

The Tenant is seeking compensation, in part, because the Landlords interfered with their ability to access their personal property. In support of this claim the Tenant contends that:

- the Tenants had property stored in the garage;
- on April 03, 2016 the Landlords prevented him from accessing the garage when they took the Tenants' remote control;

- on June 12, 2016 the Landlords left the garage open and the Tenants were able to retrieve their property from the garage;
- with the exception of June 12, 2016 the Tenants have been unable to access the garage since April 03, 2016.

The Monetary Order Worksheet indicates that the Tenant wishes to reduce the total amount of his monetary claim by $445.00. He stated that the Tenants were not obligated to pay for hydro used during the tenancy but for reasons that are unclear to me the Tenant is willing to compensate the Landlord for hydro used, in the amount of $445.00.

Analysis

I have authority, pursuant to section 62(1) of the *Act*, to determine matters related to disputes that arise under the *Act* or a tenancy agreement. I do not have authority to determine matters related to employment. On the basis of the undisputed evidence I find that the Landlord and the Tenants did not agree on how the Tenants would be compensated for stoking the wood burning furnace or for maintenance work completed at the property. As the parties did not reach an agreement regarding labour that formed a part of the tenancy agreement, I do not have authority to adjudicate the Tenant's claim for labour. The Tenants retain the right to seek compensation for their labour in a court of competent jurisdiction.

Section 19(1) of the *Act* stipulates that a landlord must not require or accept a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. On the basis of the undisputed evidence I find that the "last month's rent" of $700.00 that the Tenants paid in December of 2015 served as a security deposit. As the rent for the unit was $700.00, I find that the Landlords were only entitled to collect a security deposit of $350.00.

Section 19(2) of the *Act* stipulates that if a landlord accepts a security deposit that is greater than the amount permitted by section 19(1) of the *Act*, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. I therefore find that the Landlords must return the $350.00 security deposit they were not entitled to collect.

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.

I find that the Tenant has submitted insufficient evidence to show that the Landlords did not comply with section 32(1) of the *Act* when they insisted that the thermostat not be set past 16 degrees. In reaching this conclusion I was influenced by the fact that the Tenant provided no evidence to show that the Landlords had a legal requirement to heat the rental unit to a specific temperature. In reaching this conclusion I was further

influenced by the undisputed evidence that the Tenants were able to supplement their electric heat with a wood burning furnace, which clearly gave them the ability to keep the rental unit at reasonable temperatures.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights 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.

On the basis of the undisputed evidence I find that the Landlords periodically interfered with the Tenant's right to use the electric heat in the rental unit during this tenancy when it was turned off on at least five occasions; when it remained off for approximately one week on one occasion; and when it remained off for approximately two weeks on a second occasion. I find this was an unreasonable disturbance that significantly breached the Tenant's right to the quiet enjoyment of the rental unit between March 20, 2016 and April 25, 2016.

I find that the periodic interference with the heat source reduced the value of this tenancy by 25% for approximately one month. I therefore find that the Tenant is entitled to a rent reduction of 25% for one month, which is $175.00. In determining the reduced value of the tenancy I was mindful of the fact the Tenants had access to a wood burning furnace and were not, therefore, without heat during this period.

On the basis of the undisputed evidence I find that the Landlords periodically interfered with the Tenant's ability to use the water during this tenancy when it was turned off on at least three occasions; when there was no water in the rental unit for approximately four days on one occasion; when there was no water in the rental unit for approximately one day on one occasion; and when the Tenants did not have access to drinking water for approximately seven weeks. I find this was an unreasonable disturbance that significantly breached the Tenant's right to the quiet enjoyment of the rental unit since April 31, 2016.

I find that the periodic interference with the water supply reduced the value of this tenancy by 50% for approximately two months. I therefore find that the Tenant is entitled to a rent reduction of 50% for two months, which is $700.00. In determining the reduced value of the tenancy I was heavily influenced by my determination that most people would be seriously inconvenienced by the absence of running, potable water.

On the basis of the undisputed evidence I find that the Landlords prevented the Tenants from accessing property they had in storage between April 03, 2016 and June 12, 2016. I find this was a breach of the Tenant's right to the quiet enjoyment of the rental unit between April 03, 2016 and June 12, 2016.

I find that preventing access to stored property reduced value of this tenancy by 10% for approximately 2.5 months. I therefore find that the Tenant is entitled to a rent reduction of 5% for 2.5 months, which is $87.50.

On the basis of the undisputed evidence I find that the Tenants were not required to pay for hydro used during this tenancy. As the Tenants were not obligated to pay for hydro, I have not reduced the amount being awarded to the Tenant in compensation for hydro used during the tenancy. The Tenant may choose to pay the Landlord $445.00 for hydro used during the tenancy if the Tenant thinks that payment is appropriate.

I find that the Tenant's Application for Dispute Resolution has merit and that he is entitled to compensation for the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Tenants have established a monetary claim, in the amount of $1,412.50, which includes the $350.00 security deposit "overpayment"; $962.50 in compensation for loss of quiet enjoyment; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount of $1,412.50. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, 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: July 05, 2016

Residential Tenancy Branch