Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC PSF RP RR O FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing (1 tenant and 1 landlord). Both parties acknowledged receipt of the other's evidentiary materials for this hearing. Both parties were given an opportunity to make submissions with respect to the tenants' application. Tenant MC testified that she and her co-tenant have vacated the rental unit. Therefore, Tenant MC ("the tenant") withdrew the tenants' application for an order that the landlord provide services or facilities and that the landlord make repairs. Tenant MC confirmed her intention to continue with her application for a rent reduction and to recover the filing fee for this application.

Issue(s) to be Decided

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on November 8, 2015 and was scheduled for a fixed term of 11 months and 27 days. A copy of the residential tenancy agreement was submitted as

evidence for this hearing. The agreement indicated a rental amount of $900.00 payable on the first of each month. The landlord confirmed that he continues to hold a $450.00 security deposit paid by the tenants at the outset of the tenancy (October 7, 2015).

A previous application for dispute resolution and subsequent decision of an Arbitrator with the Residential Tenancy Branch on May 3, 2016 resulted in a settlement of the dispute between the parties. To give effect to the settlement agreement, the Arbitrator issued an Order of Possession dated July 31, 2015 as well as a monetary order in the amount of $1800.00 in favour of the landlord. That decision considered applications by both parties regarding a 10 Day Notice to End Tenancy for Unpaid Rent; monetary orders including recovery of the filing fee; and an order in favour of the tenant requiring the landlord to comply with the Act, Regulation or tenancy agreement.

At this hearing, the tenants sought to recover an amount of $536.26 for the cost of a purchases made by the tenants to resolve issues within the rental unit unaddressed by the landlord, a rent reduction and a further monetary amount for a loss of quiet enjoyment during the tenancy. Tenant MC testified that the heat in the rental unit did not work. She testified that she advised the landlord of the heat issue verbally and the landlord provided a space heater. The tenant testified that the space heater did not work well and that she ultimately bought her own portable space heater at a cost of $37.27.

The tenant testified that the doors within the rental unit were not sufficiently sealed and cold air was able to get inside the rental unit. The tenant testified that she purchased sealant for the doors at a cost of $40.39. The tenant testified that, as well as the unresolved heat issues in the rental unit the upstairs neighbours were very loud and disruptive to her and her co-tenant. The tenants sought recovery of 50% of their monthly rent from November 2015 to February 2016.

The landlord submitted photographs of the tenants' rental unit showing a clean well-kept property. The tenants submitted online fact sheets regarding mold as they also claimed mold existed within the rental unit. The tenants did not provide any documented assessments regarding the heat in the rental unit, the mold or any other repair issue raised in this hearing. The tenants did not provide written requests to the landlord regarding these issues. The tenant confirmed the testimony of the landlord that she and her co-tenant did not put any requests to the landlord in writing.

The tenants also submitted photographs of a baseboard heater; two space heaters; tape used to seal a door; and black marks on baseboards in the kitchen evidencing mold. The tenants submitted a receipt in the amount of $37.27 dated November 29, 2015 for "Gar Ceramic TWR" with a recycling fee as well as the receipt ($40.39) for door

sealing materials. No other information was provided to explain the abbreviation on the November 29, 2015 invoice for $37.27.

The landlord's testified that the rental unit had radiant heat that comes on slowly and the tenants didn't understand how to work the heat system although he attempted to explain the system on more than one occasion. At this hearing, he described how the system worked and how the tenants may have misunderstood the heating system. The landlord testified that he attempted to explain the system to the tenants but they were not receptive. He testified that he provided a space heater to satisfy the tenants and that he also offered to have an electrician come into the rental unit but the tenants refused. He provided sworn undisputed testimony that he was never advised of the other claims raised by the tenant including noise from the upstairs tenants and mold in the rental unit. He testified that he would have addressed any concerns the tenants made him aware of. Finally, the landlord submitted that any tenant claims pre-dating February 1, 2016 should have been addressed by the tenant at the previous hearing and settlement agreement.

Analysis

Pursuant to section 32 of the Act and Residential Tenancy Policy Guideline No.16, "[the] Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the Act. Damages [are] money awarded to a party who has suffered a loss which the law recognizes." When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. If a landlord fails to meet his obligations and a tenant is subsequently deprived use of a part of their premises, the tenant may be entitled to damages in the form of a rent abatement or a monetary award.

The tenant testified that the rental unit did not have sufficient heat however I find that the tenants provided insufficient evidence to support this claim. Beyond the testimony of one of two tenants in the rental unit, the tenant provided insufficient evidence to prove that the heater was not functional nor did the tenant dispute the testimony of the landlord (provision of a space heater and offer of electrical services). Pursuant to section 67 of the *Act*, in seeking a monetary award from damage or loss, the tenant is required to prove the existence of loss that stemmed from a violation of their agreement or a contravention of the *Act* by the landlord. The tenants purchased a space heater at a cost of $37.27 however there is insufficient evidence to suggest that either of the tenants provided an opportunity for the landlord to address the heating in the rental unit. Based on the evidence before me, I find that the landlord should not be held responsible for any costs the tenant incurred related to the heating issue.

With respect to the tenants' claim for a monetary award for quiet enjoyment as a result of the upstairs neighbours, mold in the unit and reduced heat in the unit, I refer to Policy Guideline No. 6 regarding the right to "quiet enjoyment" including but not limited to a right to freedom from unreasonable disturbance,

> Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

When considering whether there has been a breach of a tenant's right to quiet enjoyment, I must consider whether the landlord has created or allowed a substantial interference to the tenant's enjoyment of their premises. Temporary inconvenience does not constitute a breach of quiet enjoyment - an interference that would give the tenant sufficient cause to end the tenancy would constitute a breach of quiet enjoyment.

In this case, I find that the landlord made efforts to minimize the tenants' disruption or inconvenience in response to verbal requests received from the tenants in compliance with his obligations under the Act. The landlord provided undisputed sworn testimony that the tenants did not make written complaints or requests regarding any of the issues raised at this hearing including; complaints regarding the upstairs tenants; heat issues; and mold in the kitchen. I accept the landlord's undisputed testimony that the tenants did not, during the course of their tenancy, place the landlord in a position to address the issues they now raise after the tenancy has ended. I find that the tenant's claim for loss of quiet enjoyment is not sufficiently supported by the evidence provided in documents and testimony at this hearing.

An arbitrator may award out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; in this case, the tenant has shown that she purchased door sealant and another unidentifiable item. However, the tenants did not provide sufficient documentation to show she had asked the landlord to repair the door or that she asked the landlord to pay the costs of the door sealant during the tenancy. In the circumstances, while the tenant has provided some evidence that she purchased sealant materials for the rental unit doors, I find the tenants provided insufficient evidence that the landlord should be held responsible for those costs.

I dismiss the remainder of the monetary claims by the tenants for lack of quiet enjoyment, aggravated damages, failure to provide services and out of pocket expenses. As the tenant has been mostly unsuccessful in her application, I find that the tenants are not entitled to recover the filing fee for this application.

Conclusion

The tenants' application for an order that the landlord provide services or facilities and that the landlord make repairs is withdrawn.

The tenant's application is dismissed in its entirety.

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 06, 2016

Residential Tenancy Branch