



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence after the hearing had concluded. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2015 for a fixed term tenancy of one year, thereafter reverting to a month to month tenancy. Rent for this unit started at \$3,150.00 and increased to \$3,241.35 in 2016.

The tenant testified that when she rented this unit the advertisement stated that there was a fancy heating/cooling system that keeps an even-temperature year round with automated outdoor blinds to shield the sun when wanted. A copy of the advertisement was provided in documentary evidence. The tenant testified that the addendum to the tenancy agreement also referred to the heating/cooling system and this was provided after the hearing had concluded.

The tenant testified that a month after she moved into the unit the weather started to get warmer and the cooling system and automated blinds did not work. The blinds were repaired in January 2016. The company for the heating and cooling system have been in multiple times but no repair has been made since June 2015. The tenant testified that she has experienced two very hot summers in the unit without a cooling system. The unit faces due west and gets the late afternoon and evening sun. On August 15, the building manager confirmed the cooling system was not working and the temperature in the tenant's unit was 31 degrees. The tenant testified that with these high temperatures the tenant found it difficult to work and sleep in her unit.

The tenant testified that she first contacted the landlord about the issues in July 2015 but to date the cooling system has not been repaired. The tenant testified that when the blind repair was made the tenant hoped this would reduce the temperature in the unit in the summer of 2016 to allow the cooling system to work effectively, however, it had no effect and so the tenant has now given notice to end her tenancy and will be vacating the rental unit at the end of October, 2016.

The tenant testified that the heating/ cooling company have been out three or four times to carry out repairs and maintenance in the building and they explained to the tenant that this building has problems with the cooling system. The landlord should have

known about these problems and advised that the cooling system was not working. The tenant referred to her documentary evidence showing email exchange between the tenant and landlord and copies of the billing showing that for the cooling the bills are zero dollar amounts.

The tenant testified that as she has given the landlord ample time to effect a repair to this problem the tenant seeks a rent reduction for the loss of the cooling system at 50 cents a square foot for the 1100 square foot unit which equals an amount of \$550.00 a month for June, July and August, 2015 and June July and August, 2016 to a total amount of \$3,300.00.

The landlord disputed the tenant's claims. The landlord testified that she does not agree that the cooling system is not working and disagreed that there is anything documented in the addendum to the tenancy agreement that refers to a cooling system in the unit.

The landlord testified that this is a high tec system. The lead system delivery's water, heat and cooling to the building and these are then delivered to each individual unit. It is all in perfect working order. The landlord testified that she had a heating and plumbing company come out to do a maintenance check on August 05, 2015 and they said everything was working. The landlord agreed that she did not attend the unit herself in the summer months to confirm whether or not the cooling system was operational.

The landlord testified that she was aware the tenant had issues with the blinds and the cooling but this is a patience issue as it takes a while for the system to work and bring cooling to individual units. The landlord testified that she has not ignored the issues but testified that the tenant's system is working and the blinds were repaired in January, 2016.

The landlord asked the tenant why she continued in a month to month tenancy if she was so unhappy with the unit. The tenant responded that she was hoping the system would be repaired as no one likes to have to move.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I refer the parties to s. 27 of the *Residential Tenancy Act (the Act)* which states:

27 (1) *A landlord must not terminate or restrict a service or facility if*

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I am satisfied from the evidence before me including the advertisement for the unit which disrobed the cooling system and the addendum to the tenancy agreement that this unit was rented with a cooling system. I am also satisfied from the evidence before me in the form of the email exchange and the billing showing no charges were made for cooling, that the cooling system was not working for the summer months of 2015 and 2016.

I am not persuaded by the landlord's arguments that the cooling system worked and that it was a lack of patience on the tenant's part due to the system that has to deliver cooling to individual units. I find the tenant was extremely patient in trying to get a

solution to this issue with the cooling system and had it been working efficiently then I think it would have worked within the three month scope between June and the end of August each year even if the delivery system is slow.

Had the landlord actually been to the unit after the tenant complained about the lack of cooling the landlord could have determined the issues for herself and either given the tenant a rent reduction or worked with the Strata on effecting a solution or repair. While I accept that the repairs likely fall under the responsibility of the Strata for the building as the landlord rented this unit to the tenant with a cooling system, if it then did not work then the tenant is entitled to a retrospective rent reduction to compensate her for the reduction in the value of her tenancy.

I have looked at the tenant's calculations for a rent reduction and find the amount claimed for six months in total to be extreme as there is insufficient evidence that each day of those six months were high temperature days. I therefore reduce the tenant's claim to \$400.00 a month for June, July and August, 2015 and June, July and August, 2016 to a total amount of \$2,400.00.

In normal circumstances I would allow the tenant to reduce her rent going forward; however, as her tenancy will end at the end of this month I have awarded the tenant a Monetary Order for this amount.

Conclusion

I HEREBY FIND in favor of the tenant's claim for a rent reduction. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,400.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: October 04, 2016

Residential Tenancy Branch

