Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, MNDC, O, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to allow the tenant to change the locks of the rental unit; suspend or set limits on the landlord's right to enter the rental unit and a monetary order.

The hearing was originally convened on August 29, 2016 and conducted via teleconference and was attended by the tenant and one of the landlords. The tenant had a witness attend that hearing but due to time constraints he was not heard.

The hearing was adjourned as per my Interim Decision of August 29, 2016 and reconvened on October 24, 2016 by teleconference. The reconvened hearing was attended by the tenant and one of the landlords. The tenant's witness could not attend this hearing.

As noted in the Interim Decision due to a change in circumstances I amended the tenant's Application for Dispute Resolution to deal solely with the tenant's monetary claim and request to have the landlord provide notice of entry to the unit in accordance with the *Residential Tenancy Act (Act)*.

After the reconvened hearing had concluded the landlord submitted a copy of a Form K in relation to this tenancy. I note that during the reconvened hearing questions arose regarding this form and I noted that neither party had provided a copy of a completed Form K. I did not request or order that the landlord could submit the Form after the hearing. As such, I have not considered the Form in this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to compensation for a change in the rental rate; for moving costs; for return of a paid strata fee; for various aspects of the condition of the rental unit and renovations; for the purchase of an additional access fob; for the landlord's access to the rental unit while selling the property; failure to provide certain items and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 29, 32, 67, and 72 of the *Act.*

Background and Evidence

Both parties submitted into evidence a copy of a tenancy agreement signed by the parties on December 23, 2015 for a 6 month and 1 day fixed term tenancy beginning on January 15, 2016 that converted to a month to month tenancy on July 16, 2016. The agreement stipulated that rent is $1,600.00 due on the 1st of each month with a security deposit of $800.00 paid.

The tenant submitted the landlord had advertised the rental unit at $1,500.00 but that she agreed to pay $1,600.00 because of all of the renovations that were being completed and the landlord's assurance that they were looking for a long term rental situation. The tenant was moving to a new community and did not want to have to move again shortly after moving there. The tenant seeks compensation in the amount of $100.00 per month due to the change in the rent amount.

The tenant submitted that she was never advised that she would have to pay a move in strata fee until the day she was moving in to the unit and she was required to pay $150.00 to the strata. The tenant seeks return of this fee.

The landlord testified the tenant had signed a Form K prior to the start of the tenancy and as such was aware of the strata fee for moving into the rental unit. The tenant submitted that she had not seen a Form K until August 2016.

The parties agreed that due to renovations not being completed by January 15, 2016 the tenant did not move into the rental unit until January 22, 2016. The tenant submits that even after the delayed start date a number of items were not completed until mid-February 2016. In support of this portion of her claim the tenant has submitted a number of emails between herself and the landlord between January 23, 2016 and February 10, 2016. The landlord submitted that the additional work took only a few days and that the tenant should not receiving any rent back.

The tenant seeks return of rent for the portion of January 2016 paid and the full month of February 2016 for a total of $2,117.00. The tenant also seeks $500.00 for "unfinished items in suite per photos & microwave (email)" [reproduced as written]. The tenant submitted that despite promises to the landlord failed to provide a new microwave oven; blinds; a toilet paper holder and towel rack and that not outlets had covers on them.

The landlord stated that while the microwave was originally part of their planned upgrades to the rental unit they later determined they could not replace it and the existing microwave worked.

The tenant also submitted that she had to clean the rental unit three times after the contractors would complete their work and seeks $100.00 for each of those times for a

total of $300.00. In support of this portion of her claim the tenant has submitted several photographs of the unit during renovations.

In support of the above claims the tenant has submitted several photographs and provided dates of the photographs up to and including February 15, 2016.

During the tenancy the landlord informed the tenant that she was going to be showing an investor the rental unit in an attempt to sell the property. Later the landlord listed the property for sale and in July and August 2016 the landlord sought to show the rental unit to potential purchasers.

The tenant submitted correspondence between the parties relating to these showings. The tenant's evidence included:

- A copy of a document entitled "24 Hour Notice of Intention to Enter Dwelling" signed by the landlord on June 29, 2016 stating that "at or about 11:00 a.m. on July 5, 6, 7, 8, 9, 10, 2016 the owners or owners agent intend to enter the premises identified above which you occupy. They should need to stay approximately one hour or less. The purpose of entry is to show the dwelling unit to prospective or actual purchasers" [reproduced as written];
- A copy of the tenant's typewritten response to the landlord's notice above. In her response the tenant states that she wants to be at the property when it is shown and suggests the landlord can show the unit on July 6, from 4:30 p.m. to 6:30 p.m. and if that showing is not successful then the landlord can show it again on July 13, from 4:30 p.m. to 6:30 p.m. The letter also states that "I've also checked with the rental board and they've confirmed that with providing availability to you to show the suite, I too am entitled to the benefit of quality of life and am under no obligation to allow the suite to be viewed without my supervision" [reproduced as written].;
- A copy of a new "Notice to Enter Premises" from the landlord dated July 8, 2016 stipulating the following dates and times for showing the unit to prospective purchasers: July 12 and 14 between 5:00 p.m. and 6:00 p.m.; July 16 and 17 between 11:00 a.m. and 12:00 p.m.; July 18, 20, and 21 between 12:00 p.m. and 1:00 p.m.; and July 23 between 11:00 a.m. and 12:00 p.m.; and
- A number of emails over the relevant period of time seeking additional showings or requests to change times already noted.

The tenant submitted that she believes over the course of the time the rental unit was for sale there were between 10 and 20 showings. The landlord could not confirm the number of showings but did not believe it was as many as 20.

The tenant seeks compensation in the amount of $1,600.00 representing the return of ½ month's rent for each of the months of July and August 2016. She seeks this compensation for the loss of quiet enjoyment and the landlords' failure to provide sufficient and adequate notices.

The tenant seeks also to recover $1,250.00 which represents 50% of her moving costs because the landlords had promised a long term tenancy and the opportunity to renew the 6 month fixed term tenancy agreement. The tenant submitted that she accepted this tenancy agreement, at least in part, because she did not want to have to move a 2nd time after just moving to the area.

The tenant seeks $25.00 for the purchase of a second access fob. The landlord testified that the tenant never requested a second fob from the landlord. In support of this portion of her claim the tenant has submitted a copy of a receipt for a fob issued February 17, 2016.

The tenant also submitted that while the renovations were being completed the fireplace was apart and she had requested the landlord to clean it while it was apart but that the cleaning was not completed and so she was required to purchase special fireplace cleaner for the fireplace glass in the amount of $13.98. The tenant seeks recovery of this expense.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the tenant's claim for compensation in the amount of $700.00 or $100.00 per month because of the difference in the advertised rental rate and the rental rate that was agreed upon in the tenancy agreement, I dismiss the tenant's claim.

I find that regardless of what the landlord advertised the rental unit for the parties agreed to the amount of rent the tenant was willing to pay and the landlord was willing to accept. If the tenant did not want to pay $1,600.00 she could have not entered into the tenancy agreement. Further, the parties signing such an agreement after a different rate was advertised does not represent a violation of the *Act*, regulation or tenancy agreement.

While the burden rests with the tenant to prove her claim in regard to the payment of a move in fee, I find that it is often difficult to prove that a party has not received documents or information. As such, tenancies that occur in strata owned properties require landlords to ensure the tenant is provided with a copy of all relevant bylaws and are aware of any applicable fees.

Generally, a Form K is signed by the parties to confirm the tenant has been made aware of these things. In the absence of the submission of a Form K in accordance with the Rules of Procedure I find there is no evidence that the tenant was made aware of any fees to pay to move in to the rental unit until she was asked to do so by the strata. Therefore, I find the tenant is entitled to reimbursement of the $150.00 fee paid at move in.

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

Based on the evidence and testimony of both parties, particularly as it relates to the type of renovations not completed on the start date of the tenancy or even on the date that the tenant eventually moved, I find the landlords failed to comply with the requirements set out in Section 32(1). Specifically, I find the unit was not suitable for occupation by the tenant. As a result, I find the tenant is entitled to compensation.

Based on the content of the emails submitted into evidence and the tenant's photographic evidence I find the tenant has established entitlement of compensation for the landlord's failure to comply with Section 32(1) for the period of January 22, 2016 to February 15, 2016. There is no evidence to confirm the condition of the unit beyond February 15, 2016. Therefore, I grant the tenant $1,317.00 representing the $517.00 paid for January 2016 and $800.00 for ½ month's rent.

I am also satisfied from the tenant's submissions that she was required to clean the unit after construction was completed. I am not satisfied, however, by her submissions that the tenant was required to clean the unit on multiple occasions. As a result, I grant the tenant $100.00 for cleaning the rental unit after work was completed.

As to the tenant's claim for compensation for ½ of her moving costs because the landlord failed to keep their promised long term tenancy with an opportunity to extend the 6 month fixed term, I find the tenant is not entitled to any compensation.

I make this finding because the only relevant promise made between the parties as to the duration of the tenancy is what was agreed upon by the parties in the tenancy agreement. The tenancy agreement specifically states that the tenancy was for a fixed length of time of 6 months ending on July 15, 2016 but that the tenancy may continue after that on a month-to-month basis or another fixed length of time.

I find the fact that the landlords' personal circumstances have changed does not impact the terms of the tenancy agreement that they originally agreed to when they signed the agreement on December 23, 2015. As such, even prior to the landlords selling the property the landlord had the right to end the tenancy for any of the allowable reasons noted in Sections 46 to 49 of the *Act*. If the landlords wanted to end it for their personal

use (under Section 49) they could do so effective any time on or after the end of the 6 month fixed term.

As such, I find the landlords have not violated the *Act*, regulation or tenancy agreement.

In regard to the tenant's claim for $500.00 for items not provided I find there is insufficient evidence that either the tenant was promised all of the items identified or that she suffered a loss as a result of any failure to provide them. Therefore, I dismiss this portion of the tenant's claim.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: 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 Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authourizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property.

Residential Tenancy Policy Guideline 6 states a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means **substantial** interference with the ordinary and lawful enjoyment of the premises.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises and to show the property to prospective purchasers.

Residential Tenancy Policy Guideline 7 stipulates that where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry. Where a notice is given that meets the time constraints of the *Act*, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- Inspecting the premises for damage,

- Carrying out repairs to the premises,
- Showing the premises to prospective tenants, or
- Showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Where possible the parties should agree beforehand on reasonable times for entry. I accept that while it does not appear the parties ever reached an agreement as to when the landlord would be allowed viewings the landlords' reasons for entering the unit was reasonable.

I find that the schedule for viewings as proposed by the landlords on both June 29, 2016 and July 8, 2016 were reasonable. I find that despite the tenant's insistence on being in attendance at the viewings it would not be reasonable for the landlord to be restricted to showings of only 2 hours once per week as suggested by the tenant.

I find a landlord is not obligated to schedule such viewings at a time that would conveniently allow a tenant to attend a viewing. I find, in fact, the landlord was attempting to minimize any loss of quiet enjoyment to the tenant by setting a schedule that included most viewings when the tenant would in fact not be at home.

Despite these proposed schedules by both parties I find the landlord and tenant did communicate through text message and email on numerous occasions for changes to specific viewings.

Furthermore, even if I accept the tenant's maximum estimate of 20 viewings over the course of a 2 month period I find there was not a substantial interference with the ordinary and lawful enjoyment of the rental unit. I find, if anything, the disturbances to the tenant's quiet enjoyment resulted in her insistence on participating in the viewings.

For these reasons, I dismiss the tenant's claim for compensation for loss of quiet enjoyment in the amount of $1,600.00 for the months of July and August 2016.

I find the tenant has failed to establish that she ever identified a need for the landlord to provide her with a second access fob. As such, I find the landlord cannot be held responsible for the cost incurred by the tenant when she obtained a second fob without asking the landlord. I dismiss this portion of the tenant's claim.

And finally, in regard to the tenant's claim for recovery of the cost of fireplace glass cleaner I find the tenant has failed to provide any evidence that, on a balance of probabilities, such a cost was necessary for her to incur. As a result, I dismiss this portion of the tenant's claim.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$1,592.00** comprised of $1,317.00 rent returned; $150.00 move in fee returned; $100.00 cleaning; and $25.00 of the $100.00 fee paid by the tenant for this application as she was only partially successful.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 23, 2016

Residential Tenancy Branch