Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, PSF, RR, O

Introduction

A hearing was convened on January 23, 2016 to consider the merits of the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement; for authority to reduce the rent for repairs, services, facilities, agreed upon but not provided; for an Order requiring the Landlord to provide services or facilities; and for "other".

It is readily apparent from information provided with the Application for Dispute Resolution that the Tenant is seeking compensation for noise disturbances; for being unable to receive mail; and for the absence of snow removal and those issues will be considered at these proceedings. It is also readily apparent from information provided with the Application for Dispute Resolution that the Tenant is alleging there has been a rent increase that does not comply with the legislation and that matter will also be considered at these proceedings.

The hearing on January 23, 2017 was adjourned for reasons outlined in my interim decision of January 23, 2017. The hearing was reconvened on February 22, 2017 and was concluded on that date.

The Tenant stated that on February 05, 2017 or February 06, 2017 the Application for Dispute Resolution, the Notice of Hearing, and the three page written summary were sent to the Landlords, via registered mail. The Landlords acknowledged receipt of the documents.

The parties were given the opportunity to present oral evidence, to ask questions, and to make submissions.

Issue(s) to be Decided

Is there a need to issue an order requiring the Landlord to make repairs to the rental unit or to provide services?
Has there been a rent increase that does not comply with the legislation?
Is the Tenant entitled to compensation as a result of the breach of his right to quiet enjoyment of the rental unit or for other deficiencies with the rental unit?

Background and Evidence

The Landlords and the Tenant agreed that the Tenant is required to pay rent of $600.00 by the first day of each month.

The Tenant is seeking an Order requiring the Landlords to ensure that the exterior lights work consistently. He is also seeking compensation for the inconvenience of the inadequate lighting. In regards to this application the Tenant stated that:

- there has been an on-going issue with the exterior lights during his tenancy;
- there was a switch for the lights, located inside the garage, which was periodically turned off;
- in May of 2016 he asked the Landlords to turn the lights on and the request was refused;
- the lights were not turned on again until December of 2016;
- he did not notify the Landlords of a concern with the lights in November of December of 2016 as the problem had been previously reported;
- the lights are now turned on but one of the four exterior lights is not working;
- the three exterior lights that are working have two light bulbs in each fixture; and
- one of the light bulbs is burned out in two of the fixtures.

In response to the application for an Order requiring the Landlords to ensure the exterior lights work consistently the Landlords contend that:

- there has not been an on-going issue with the exterior lights;
- the lights have never been intentionally turned off;
- in May of 2016 the Tenant asked the Landlords to turn the lights on;
- the Landlords were unable to comply with that request because there was an electrical fault;
- the lights were repaired within a day of two of being informed of the problem in May of 2016;
- the Landlords understand that the lights stopped working again sometime after they left the country on November 22, 2016;
- the lights were again repaired in late December of 2016; and
- all of the fixtures and light bulbs are currently working.

The Tenant contends that he is frequently being disturbed by loud music and sounds of stomping emanating from the Landlords' home and he is seeking compensation for a breach of his right to quiet enjoyment of his home. He stated that the noise prevented him from having his daughter visit, as he did not want her wakened by the noise. He stated that the noise prevented him from sleeping in the two bedrooms, as he was wakened by the noise when he slept in those rooms. He stated that the noise prevented him from sleeping properly and, on occasion, made him late for work.

The Landlords' submit that they do not stomp on the floors and they do not play loud music. They stated that sometimes when they are watching television the noise level increase when music is playing but they never play the television loudly after 9:00 p.m.

The Tenant is seeking compensation for being without regular mail delivery for a period of approximately six weeks. In regards to this application the Tenant stated that:

- typically the mail is delivered to the Landlords by Canada Post, who then deliver his mail to the mail box designated for his rental unit;
- he only received mail on two occasions between November 22, 2016 and January 09, 2017;
- on January 09, 2017 a representative for the Landlords provided him with a key to the Landlord's mail box, which enabled him to access the mail directly;
- the mail box key was returned to the Landlords after they returned to the country on January 20, 2017; and
- proper mail delivery has resumed and there is no need to issue an Order requiring the Landlord to remedy a problem with the mail.

In response to the claim for inconsistent mail delivery the Landlords contend that:

- they made arrangement to have a relative deliver the mail each week;
- one of the occupants of the residential complex told the relative that mail delivery was inadequate;
- the relative provided the Tenant with a key to their mail box on an unknown date; and
- the key to mail box has been returned.

The Tenant is seeking compensation for having to remove snow from the residential property. In regards to this application the Tenant stated that**:**

- when the Landlords left the country on November 22, 2016 they did not provide him with a person to contact in case of an emergency;
- sometime in early December another occupant of the residential complex provided him with a contact number for a woman who was acting on behalf of the Landlords;
- when that woman was contacted she said was unable to clear the snow on behalf of the Landlords;
- the woman acting on behalf of the Landlords suggested he find a shovel and clear the snow;
- the woman acting on behalf of the Landlords never told him to hire someone to clear the snow;
- he and another occupant of the residential complex had to clear snow and ice from the sidewalk on three occasions while the Landlords were away;
- he estimates he spent approximately six hours clearing the snow and ice; and
- he thinks he should be paid $150.00 for the time he spent clearing the sidewalk.

In response to the claim for snow removal the Landlords contend that:

- in the first week after the Landlords left the country on November 22, 2016 a relative provided the Tenant with her contact information in case of an emergency;
- when the Tenant asked the contact to clear the snow she told him she was unable to assist and told him they would pay for the cost of clearing the snow;
- the parties have not discussed compensation for clearing the snow; and
- the Landlord think the Tenant is entitled to compensation for clearing the snow, in the amount of $100.00.

The Tenant is seeking compensation for being without cable service for a brief period of time. In regards to this application the Tenant stated that:

- cable service was provided with the tenancy;
- the Landlords turned off the cable service on December 31, 2015 for approximately 1.5 hours
- the Landlords turned off the cable service again in the following week for "a couple of hours"; and
- after the disruption in service stopped after the Landlords were told they would have to reduce the rent if cable service was terminated.

In response to the claim for disrupted cable service the Landlords contend that they never intentionally disrupted cable service although they recall having difficulties with their cable service during that time period.

In regards to the application to dispute a rent increase the Tenant stated that the Landlords told him that his rent would increase by $100.00 but the Landlords have not imposed that rent increase.

The Tenant is seeking compensation for being without heat for the period between April 01, 2016 and mid-October of 2016. In regards to this application the Tenant stated that the Landlords turn off the heat during this period and he has to heat his unit with space heaters.

In response to the claim for the heat being turned off the Landlords contend that they once turned the heat off for maintenance purposes for a period of a few hours but it has never been turned off for an extended period. They contend that the Tenant has a thermostat in his rental unit which enables him to control the heat in his unit.

Analysis

There is a general legal principle that places the burden of proving the claim on the party who filed the Application for Dispute Resolution, not the party responding to the claim. In these circumstances the burden of proof rests with the Tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party

making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find that the Tenant has failed to establish that the exterior lights at this residential complex never worked between May of 2016 and December of 2016. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that were turned off during this entire period or that refutes the Landlords' submission that they were not working for a few days in May of 2016 and they were not working for some period between November 22, 2016 and December of 2016, due to electrical problems.

On the basis of the Landlords' submission I accept that the lights did not work for a few days in May of 2016. I find that this is a relatively minor inconvenience and I do not find that the Tenant is entitled to compensation for this minor disruption in service.

On the basis of the Landlords' submission I accept that the lights did not work for some period between November 22, 2016 and December of 2016. On the basis of the testimony of the Tenant I find that the Landlords were not home during this period and that he did not bring the problem to the attention of the person who was responsible for the home in the absence of the Landlords. As the Tenant did not report the problem with the lights after November 22, 2016 the Tenant could not have any reasonable expectation that the lights would be repaired and I therefore find that he is not entitled to compensation for this service disruption.

I find that the Tenant has failed to establish that the exterior lights are not currently fully functional. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that one of the fixtures and some of the bulbs are not currently working or that refutes the Landlords' submission that all of the fixtures/bulbs are currently working.

As the Tenant has failed to establish that the Landlords have not responded appropriately upon discovering that the exterior lights were not working, I dismiss the Tenant's application for an Order requiring the Landlord to repair the lights.

The evidence before me is that the Tenant thinks the Landlords are excessively loud and the Landlords do not believe they are being loud. While I accept the Tenant's submission that he is being disturbed by noise emanating from the Landlords' suite, I find there is insufficient evidence to conclude that the noise levels are unreasonable. In the absence of evidence, such as a recording, that corroborates the Tenant's submission that the Landlords are being excessively loud, I am unable to conclude that Landlords are being unreasonably loud. I therefore dismiss the Tenant's application for compensation for a breach of his right to the quiet enjoyment of his home as a result of noise.

On the basis of the undisputed evidence I find that the Landlords forward mail to the Tenants which is delivered to the Landlords by Canada Post. I therefore find that this is a service that is provided with the tenancy. On the basis of the undisputed evidence I find that mail was delivered inconsistently between November 22, 2016 and January 09, 2017.

Section 27(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. I cannot conclude that home mail delivery if essential to the use of a rental unit as living accommodation as the Tenant has the ability to have his mail delivered to an off-site post box.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1) of the *Act,* if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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 find that the inconsistent mail delivery that occurred between November 22, 2016 and January 09, 2017 constitutes a reduction in a service of facility. As there is no evidence before me that would suggest the inconsistent delivery resulted in any significant loss to the Tenant, I find that the consequences of the inconsistent delivery were relatively insignificant. I therefore find that this temporary reduction in service reduced the value of the tenancy by only $20.00 and I find that the Tenant is entitled to compensation in this amount.

Section 32(1) of the *Act* requires landlords 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. Residential Tenancy Branch Policy Guideline #1, with which I concur, stipulates that a landlord is responsible for shoveling snow in multi-unit residential complexes.

On the basis of the undisputed evidence I find that the Landlords failed to clear snow from the residential property between November 22, 2016 and January 20, 2017. As the Tenant completed this task on behalf of the Landlords I find that he is entitled to compensation for the 6 hours he estimates he spent clearing the snow. I find that $20.00 per hour is reasonable compensation for this labour and I therefore grant him $120.00 for clearing the snow.

On the basis of the undisputed evidence I find that the cable service in the rental unit was not interrupted for any extended period of time in December of 2015 or January of 2016. I find that the Tenant has failed to establish that the Landlords were responsible for any service interruption. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s speculation that the Landlords’

turned off the cable service or that refutes the Landlords' submission that they experienced a disruption in cable service during that time period.

As the Tenant has failed to establish that the Landlords were responsible for terminating cable service in the rental unit, I dismiss the Tenant's application for compensation for a temporary disruption of his cable service.

As there is no evidence that the Landlords imposed a rent increase that does not comply with the *Act*, I find there is no need for me to consider the Tenant's application to dispute a rent increase.

I find that the Tenant has failed to establish that the Landlords the heat in the rental unit was turned off for any extended period. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that it was turned off for several months or that refutes the Landlords' submission that they have not turned it off for any extended period of time.

As the Tenant has failed to establish that the heat was turned off for any significant period of time, I dismiss the Tenant's application for being without heat.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of $140.00, which includes $20.00 for a disruption in mail service and $120.00 for clearing the snow. Based on these determinations I grant the Tenant a monetary Order for $140.00. 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 *Act*.

Dated: February 26, 2017

Residential Tenancy Branch