Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 10, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on her own behalf and was accompanied by three witnesses: K.G., T.V., and B.J. The Landlord attended the hearing on his own behalf. All in attendance provided a solemn affirmation.

The Tenant testified that the Application package and a subsequent documentary evidence package were served on the Landlord by registered mail. The Landlord acknowledged receipt of both. The Landlord testified that a documentary evidence package was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to a monetary order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began in 2014 and ended by agreement on February 28, 2017. The agreement to end the tenancy was reached during a dispute resolution proceeding that took place on December 20, 2016. The parties also agreed that rent was due in the amount of $1,640.00 per month at the end of the tenancy.

The Tenant sought monetary relief arising from renovation and repair work the Landlord undertook at the rental property. The Tenant's claim is set out in a Monetary Order Worksheet, dated December 18, 2017.

First, the Tenant claimed $400.00 to replace plants and bulbs she claimed were either "ripped up" or taken by the Landlord. The Tenant acknowledged the value she attributed to the plants was an estimate, suggesting the value was likely much greater. In any event, the Tenant advised that on September 16, 2016, the Landlord showed up at the rental property, without notice, and started to replace siding and front steps. As part of the work, the Landlord also removed plants at the front of the rental property. The Tenant referred me to photographs of the garden, and the renovation and repair work in various stages of completion. The Tenant also referred me to an image of a "stop work" notice from the city with respect to the renovation and repair work.

In reply, the Landlord acknowledged removing the plants as claimed. However, he stated he did not destroy them but placed them in bags and later replanted them in a different part of the yard. He submitted photographs into evidence that were previously relied upon by the Tenant at the dispute resolution hearing referred to above. The images depicted plants in bags.

Second, the Tenant claimed $600.00 for Hydro bills she paid but which she alleges should have been paid by the Landlord or the other tenants. The amount claimed was calculated based on an estimate of $25.00 per month for 24 months. The Tenant testified that her Hydro bills were elevated due to the activities of non-residential tenants on the rental property. In particular, the Tenant referred to the presence of welding equipment at the rental property. In support of the estimated value of her loss, the Tenant referred me to BC Hydro invoices dated November 29, 2016, and January 30, 2017.

In reply, the Landlord testified the Tenant was aware the Landlord rented out other parts of the rental property to non-residential tenants. He referred me to a copy of the agreement between the parties, which was included with the Landlord's documentary evidence. It states:

> *This agreement is for the house only. The garage located at the same address is rented separately.*
>
> *…*
>
> *The tenant is responsible to pay for TV cable, phone line, natural gas and electricity bill. The garage at the back of the property uses electricity supplied*

from the house. This electricity is estimated to be one hundred and twenty ($120.00) dollars or less per year. This is to be included in the house bill and is to be paid by the house tenants.

[Reproduced as written.]

In addition, the Landlord referred to an electricity summary report, describing the amount paid for Hydro service by the Tenant for the period from December 1, 2014, to November 25, 2016, roughly 24 months, the approximate duration of the tenancy. He stated the report was submitted into evidence by the Tenant at the previous dispute resolution hearing on December 20, 2016. It appears to confirm the total amount paid for electrical service during the tenancy was $2,377.70.

Third, the Tenant claimed $1,780.00 for loss of quiet enjoyment of her home arising from the repairs and renovations the Landlord undertook at the rental property. This amount was calculated based on a 1/3 rent reduction for three months. The Tenant testified the Landlord attended to replace the stairs on September 16, 2016. Although she was "not 100% certain" of the date the work was completed, the Tenant estimated the work ended sometime in December 2016. The work complained of by the Tenant included removal and replacement of the front steps and siding on the front of the rental property. The Tenant indicated the Landlord was sometimes at the property every day of the week; at other times, the Landlord attended only two days per week. She advised the work was particularly disruptive due to health issues she experiences, which were exacerbated by the stress she experienced.

In reply, the Landlord acknowledged he completed the work. He testified it needed to be done due to age and condition. However, he advised the work was substantially completed by October 11, 2016. In support, the Landlord submitted a photograph previously relied upon by the Tenant at the dispute resolution hearing on December 16, 2016. The photograph was dated October 11, 2016, and depicted the rental property with new siding and new front steps. The Landlord confirmed he did not return to the rental property to do work after October 11, 2016, but that a contractor attended for about an hour to install railings on the new front steps.

In addition, the Landlord submitted a hand-written document estimating the time it took to complete the work. It indicates that the project took an estimated 24 days, but that he was present at the rental property for only 14 of those days.

Fourth, the Tenant claimed $3,280.00 as compensation because the Landlord did not use the property for the purpose stated on a notice to end tenancy for landlord's use of property. Although a copy was not provided with the Tenant's documentary evidence, there was no dispute that the Landlord issued a notice to end tenancy for landlord's use of property because he and his spouse intended to move in. The Tenant advised she has proof that the Landlord did not occupy the rental property, which was the stated purpose for ending the tenancy.

In reply, the Landlord testified that the end of the tenancy was settled by agreement at the dispute resolution hearing on December 20, 2016, and that he was no longer obligated to occupy the rental property. A copy of the settlement agreement reached was submitted into evidence by the Landlord. Among other things, it confirmed the parties' agreement that the tenancy would end on February 28, 2017; that the Landlord would withdraw the notice to end tenancy for landlord's use of property; and that the Tenant would withdraw her application to cancel the notice to end tenancy for landlord's use of property.

Fifth, the Tenant claimed $640.00 for moving expenses. She testified that she felt forced out of the rental property and that the Landlord should bear some of that expense. The Landlord disagreed with this aspect of the Tenant's Application.

Finally, the Tenant sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for $400.00 to replace plants and bulbs that were taken or destroyed by the Landlord, I find the Landlord attended the property unannounced and proceeded to remove plants and bulbs located in a garden at the front of the property. This was in aid of renovations and repairs to the siding and front steps. However, I am not satisfied of the value of the loss, or that the Tenant took steps to minimize her loss. For example, the Tenant could have approached the Landlord to ask that plants and bulbs be moved safely to another area. Alternatively, the Tenant could have taken steps to remove the plants and bulbs of concern herself. Accordingly, I find there is insufficient evidence before me to conclude the Tenant is entitled the relief sought. This aspect of the Application is dismissed.

With respect to the Tenant's claim for $600.00 for Hydro bills she paid but which she alleges should have been paid by the Landlord or a non-residential tenant, I find there is insufficient evidence of loss before me to justify the amount claimed. The Tenant acknowledged the amount sought was estimated and provided insufficient evidence of the amount of her loss due to the electricity consumption of the non-residential tenants. On the other hand, the Landlord submitted a copy of the tenancy agreement that confirmed the presence of the non-residential tenants, that all electricity use was to be paid for by the Tenant, and included an estimate of the monthly electrical bill. This aspect of the Application is dismissed.

With respect to the Tenant's claim for $1,780.00 for loss of quiet enjoyment of her home arising from the construction the Landlord undertook at the home, section 28 of the *Act* states:

> *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*
>
> [Reproduced as written.]

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

> *The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may for a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:*

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*

- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

…

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

However, these statements must be balanced with a landlord's obligation to repair and maintain rental property. Specifically, section 32 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…makes it suitable for occupation by a tenant."

In this case, I find the renovation and repair work did not result in a loss of quiet enjoyment as contemplated under Policy Guideline #6. I find it is more likely than not that the work was substantially completed by October 11, 2017, less than one month after it began. I also find it more likely than not that the Landlord attended the property approximately 14 times during the renovation and repair work. I make these findings because the Tenant was uncertain about the

duration of the renovation and repair work. On the other hand, the Landlord submitted photographic evidence relied upon by the Tenant at the dispute resolution hearing on December 20, 2016, which strongly suggested the work was substantially completed by October 11, 2016. In the circumstances, I find the renovation and repair work was a temporary discomfort or inconvenience that was not frequent and ongoing. This aspect of the Application is dismissed.

With respect to the Tenant's claim for $3,280.00 as compensation because the Landlord did not do what he said he would do with the property, I find that the parties came to an agreement at the dispute resolution hearing on December 20, 2016. At that time, the parties agreed to end the tenancy on February 28, 2017. As part of the settlement, the Landlord agreed to withdraw the notice to end tenancy for landlord's use of property, and the Tenant agreed to withdraw the application to cancel the notice to end tenancy. Accordingly, I find the settlement had the effect of voiding both documents. The result is that the Tenant is not entitled to recover additional compensation under section 51 of the *Act*. This aspect of the Application is dismissed.

Finally, with respect to the Tenant's claim for $640.00 for moving expenses, I find the tenancy ended by agreement between the parties. Landlords are not responsible for their tenant's moving expenses. This aspect of the Application is dismissed.

As the Tenant has not been successful, I find the Tenant is not entitled to recover the filing fee paid to make the Application. The Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

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: January 10, 2018

Residential Tenancy Branch