Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 612333 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR FF
Tenant: PSF LRE CNR MNDC OLC RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Landlords' Application for Dispute Resolution was made on February 16, 2018 (the Landlords' Application"). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made on January 19, 2018 (the "Tenant's Application"). The Tenant applied for the following relief, pursuant to the *Act*:

- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order setting or suspending conditions on the Landlords' right to enter the rental unit or site;
- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

The Landlord R.L. attended the hearing on his own behalf. P.K. also attended the hearing and advised he was the owner and landlord of the rental unit. The Tenant attended the hearing on her own behalf and was assisted by M.G., an advocate. All in attendance provided a solemn affirmation.

On behalf of the Landlords, R.L. testified the Landlords' Application package was served on the Tenant by registered mail on February 18, 2018. M.G. acknowledged receipt of the Landlords' Application package.

On behalf of the Tenant, M.G. testified the Tenant's Application package was served on R.L., in person, but conceded subsequently served documentary evidence was not served in accordance with the Rules of Procedure. However, during the hearing, R.L. acknowledged receipt and indicated he had an opportunity to review the documents. P.K. interjected and advised he was in India and had not received the Tenant's documentary evidence and submitted that it should be excluded. During the hearing, I concluded that R.L. had received the Tenant's documents and had sufficient opportunity to review them. I note that many of the documents to which I was referred included the Tenant's written submissions and text messages between the Tenant and R.L., and that the Landlords would not be prejudiced if they were considered. Accordingly, the parties were advised that the Tenant's documentary evidence would be considered and the hearing would proceed. Despite the objections of P.K., and pursuant to section 71 of the *Act*, I find the documents upon which the parties intended to rely were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

In a written statement, the Tenant indicated she moved out of the rental unit on January 27, 2018. Accordingly, it was not necessary to consider the Tenant's requests for the following relief:

- an order that the Landlord provide services or facilities required by the tenancy agreement or law;

- an order setting or suspending conditions on the Landlords' right to enter the rental unit or site;
- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement.

These aspects of the Tenant's Application are dismissed, without leave to reapply. The hearing will deal only with the Tenant's request for monetary relief.

In addition, the named Landlord is a representative of the corporate landlord indicated on the tenancy agreement, a copy of which was submitted into evidence. Accordingly, pursuant to section 64 of the *Act*, I find it is appropriate to amend the Applications to include the name of the corporate landlord indicated on the tenancy agreement.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to recover the filing fee?
3. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Tenant entitled to an order that rent be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed the Tenant viewed the rental unit on November 28, 2017, and signed the tenancy agreement on that date. The tenancy agreement submitted into evidence confirmed the tenancy began on December 1, 2017, and ended when the Tenant vacated the rental unit on January 27, 2018. During the brief tenancy, rent in the amount of $725.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of $362.50, which the Landlords hold.

The Landlords' Claim

On behalf of the Landlords, R.L. confirmed that rent was not paid when due on January 1, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 5, 2018, a copy of which was submitted into evidence. However, as noted above, the parties agreed the Tenant vacated the rental unit on January 27, 2018. R.L. testified the Tenant did not pay rent on February 1 and March 1,

2018, and that the Landlord was unable to re-rent the unit until March 15, 2018. The Landlords also sought to recover the $100.00 filing fee paid to make the Application.

In reply, the Tenant acknowledged that she vacated the rental unit on January 27, 2018, due to issues concerning the water supplied to the rental unit. However, she testified that verbal notice was given to R.L. on or about January 11, 2018.

The Tenant's Claim

The Tenant's Application disclosed a claim for $5,000.00 as a refund for rent paid, compensation for hardship, and expenses incurred due to the condition of the water in the rental unit. In addition, the Tenant's Application disclosed a claim for $5,000.00 as a rent reduction for repairs, services or facilities agreed upon but not provided. The Tenant's claims were not further particularized in the Tenant's Application, as required under section 59 of the *Act*, but were elaborated upon by M.G. during the hearing. M.G.'s submissions are included below.

The Tenant testified that she noticed issues with the water in the rental unit upon moving in. Specifically, the Tenant testified that there was no hot water and that the water produced from the taps smelled of rotten eggs. According to the Tenant, she reported her concerns to R.L., who attended the rental unit on December 5, 2017. Communications between the Tenant and R.L. provide a history of communications between them. The Tenant confirmed that R.L. made arrangements for a plumber to attend. However, the issue was not resolved to the Tenant's satisfaction. The Tenant submitted that the Landlord did not take sufficient steps to resolve her concerns. M.G. also advised that the tap water caused the leaves of a plant to dissolve, referring me to a photographic image of a plant that was included with the Tenant's documentary evidence. He also advised that the Tenant's cat refused to drink the tap water. Further, the Tenant testified she had to purchase water and had to bathe in a community centre.

On behalf of the Tenant, M.G. submitted that the tenancy was frustrated as a result of the issues presented by the water; that the Landlord did not maintain the rental unit in a state of repair that complied with the health, safety and housing standards required by law, and made it suitable for occupation by a tenant, contrary to section 32 of the *Act*; that the Tenant experienced a loss of quiet enjoyment of the rental unit; and that the Tenant was entitled to recover double the amount of the security deposit, having provided the Landlord with her forwarding address in writing.

In reply, L.R. provided a timeline of events. He acknowledged the Tenant complained about the water upon moving into the rental unit. Further, L.R. confirmed he attended the rental unit on December 5, 2017, and noted a "slight smell", which he concluded was likely because water in the area has a high mineral content. However, he made arrangements to have a plumber attend. The plumber attended the rental unit on December 12, 2017. According to L.R., the plumber was unsure of the cause of the smell but suggested it may have been due to a new hot water tank. The plumber concluded the odour was not likely harmful. On December 22, 2017, a maintenance person attended the rental unit and again observed a slight odour which he again attributed to the mineral content of the water. On January 3, 2018, L.R. attended the rental unit to further address the Tenant's concerns, and the Tenant slammed the door in his face. On January 13, 2018, the Landlord offered the Tenant a new rental unit in the building, but the offer was refused. On January 18, 2018, L.R. returned to the Tenant's rental unit but she refused to open the door. The Tenant moved out of the rental unit on January 27, 2018. According to L.R., the previous and subsequent tenants did not complain about the water in the rental unit.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

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 each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

The Landlords' claim is for unpaid rent. Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In this case, it was undisputed that rent no rent has been paid in 2018.

In addition, section 45 of the *Act* confirms that a tenant's notice to end the tenancy is effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In this case, the Tenant testified she advised R.L., on or about January 13, 2018, that she did not intend to continue to reside at the rental unit. This testimony was not disputed by R.L. However, pursuant to section 45 of the *Act*, even if given in accordance with the *Act* on January 13, 2018, such notice would not be effective until February 28, 2018. As a result, I find it is reasonable in the circumstances to grant the Landlord a monetary award of $1,450.00 for unpaid rent for the months of January and February 2018. Rent for the period from March 1-14, 2018, has not been awarded as there was insufficient evidence of the Landlord's efforts to re-rent the unit put before me. Having been successful, I also find the Landlord is entitled to recover the $100.00 filing fee paid to make the application. I order that the security deposit held be applied to the award granted to the Landlord.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary award in the amount of $1,187.50, which has been calculated as follows:

Claim	**Amount**
Unpaid rent:	$1,450.00
Filing fee:	$100.00
LESS security deposit:	($362.50)
TOTAL:	**$1,187.50**

The Tenant's Claim

As noted above, the Tenant's claims were not fully particularized in the Application. However, both the Tenant and M.G. submitted the rental unit was unliveable due to issues with the water and that the Tenant is entitled to be compensated.

With respect to the Tenant's submission she is entitled to compensation because the Landlord did not repair and maintain the rental unit in accordance with section 32 of the *Act*, I find there is insufficient evidence before me to grant compensation on this basis. The testimony of the parties differed. The Tenant's testimony was that the water supplied to the rental unit made it unliveable. Her testimony in that regard was contradicted by R.L., who attended the rental unit within days of the Tenant's initial complaint and noticed a "slight smell", which he attributed to the mineral content of the water in the area. Further, the parties acknowledged that R.L. made arrangements for a plumber to attend. R.L. testified that the plumber attributed the slight odour to a new hot water tank and concluded the water was not likely harmful. R.L. subsequently attended the rental unit on at least two occasions in attempts to address the Tenant's concerns, but he was not permitted to access the rental unit. In the circumstances, I find that the Landlords' efforts to repair and maintain the rental unit and address the Tenant's concerns were reasonable in the circumstances. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's assertion that the tenancy agreement was frustrated, Policy Guideline #34 states:

> *A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*
>
> *The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a*

> *contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission*.
>
> [Reproduced as written.]

As noted, mere hardship is not sufficient grounds for finding a contract to have been frustrated. I find the Tenant's concerns were mere hardship that did not affect the nature, meaning, purpose, effect, and consequences of the contract.

Further, I note the Tenant had the option of remaining in the rental unit and proceeding with her applications for orders that the Landlords provide services or facilities required by the tenancy agreement or law, that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement, and that the Landlord make repairs to the rental unit. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's submission she is entitled to compensation for loss of quiet enjoyment, 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. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*
>
> *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.*
>
> *A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.*
>
> [Reproduced as written.]

In this case, I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. Specifically, I find that the Landlords took reasonable steps to address the Tenant's concerns by engaging a plumber to attend, but that R.L.'s subsequent attempts to address the Tenant's concerns were thwarted by the Tenant. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for the return of double the amount of the security deposit, section 38 of the *Act* confirms that a landlord's obligation to return a security deposit to a tenant arises on receipt of the tenant's forwarding address in writing. A landlord has 15 days after receipt of a tenant's forwarding address in writing to return the security deposit or make a claim against it by filing an application for dispute resolution. In this case, the Tenant submitted a letter dated February 2, 2018, into evidence, in which she requested the return of the security deposit. The Landlords' Application was made on February 16, 2018, within the timeframe permitted under section 38 of the *Act*. In light of my finding that the Landlord is entitled to compensation for unpaid rent, and that the Landlords are entitled to retain the security deposit in partial satisfaction of the claims, I find that this aspect of the Tenant's Application is dismissed.

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

Conclusion

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

Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of $1,187.50. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 22, 2018

Residential Tenancy Branch