Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on November 12, 2018. The landlord confirmed receipt of the dispute resolution package on November 14, 2018. I find that the landlord was served with this package on November 14, 2018, in accordance with section 89 of the *Act.*

The landlord testified that he served the tenant with two evidence packages by placing the packages in the tenant's mailbox on December 3, 2018 and December 7, 2018, respectively. The tenant confirmed receipt of the first evidence package on December 3, 2018 and receipt of the second evidence package on December 9, 2018. I find that both evidence packages were served in accordance with section 88 of the *Act*.

Preliminary Issue- Tenant's Monetary Claim

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The tenant testified that she is seeking a Monetary Order in the amount of $20,000.00. I informed the tenant that she did not apply for a Monetary Order and that I would not hear her claim for a monetary award because the landlord was not provided with notice of the claim made against him. I find that since the tenant only applied for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement and authorization to recover the filing fee for this application from the landlord, the landlord could not have reasonably have anticipated and prepared for the tenant's $20,000.00 monetary claim.

I decline to amend the tenant's application.

Issue(s) to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2016 and is currently ongoing. The tenant will move out of the subject rental property on December 23, 2018. Monthly rent in the amount of $1,456.00 is payable on the first day of each month. A security deposit of $700.00 was paid by the tenant to the landlord. Both parties agree that on November 1, 2018 a sewage back up occurred in the subject rental property affecting the toilet and bathtub in the bathroom. The tenant contacted

both the strata manager and the landlord on November 1, 2018 regarding the sewage issue.

The landlord, through testimony and written submissions, made the following statements. He and a plumber attended at the subject rental property on November 1, 2018 to deal with the plumbing problem. The plumber was not able to fix the problem and informed the landlord that he would need different equipment which he would bring the following day. On Friday, November 2, 2018 the plumber attended at the subject rental property with more equipment but was still unable to correct the problem. Another plumber was called in, but the problem was still unable to be resolved. The plumbers advised that they would have to return on Monday, November 5, 2018. The tenant did not dispute the above testimony.

The landlord, through testimony and written submissions, made the following statements. The plumbers returned on November 5, 2018 and determined that they would have to access certain pipes from a neighbor's unit to fix the clog. The clog was fixed on November 5, 2018. A bio-wash technician attended at the subject rental property on November 6, 2018 and cleaned the affected area. On November 8, 2018 the landlord and a person from the restoration company walked through the subject rental property to determine the scope of work required to fix the affected areas. The landlord entered into evidence an e-mail from the restoration company confirming the above timeline. The tenant did not dispute the above testimony.

The tenant testified to the following facts. The landlord and a maintenance person attended at the subject rental property on November 8, 2018 and shut off the water to the subject rental property. The landlord knew the water was turned off and did not turn the water back on until December 3, 2018. The tenant testified that she e-mailed the landlord on November 8, 2018 and asked him to turn the water back on, but he did not. The aforementioned e-mail was not entered into evidence at the time of the hearing, I allowed the tenant 24 hours to submit the November 8, 2018 e-mail.

The landlord testified to the following facts. He did not know the water was turned off on November 8, 2018 and that it was his understanding that the bathroom was in usable condition as of November 6, 2018 when the bathroom was professionally cleaned. The landlord testified that the first time he became aware of the water being turned off was on December 3, 2018 and that he immediately called a plumber to have the water turned back on.

The landlord testified that he did not receive an e-mail from the tenant on November 8, 2018 advising him that the water was turned off. The landlord testified that he did receive an e-mail from the tenant on November 6, 2018 complaining about the unsanitary condition of the bathroom and that later that day he had the affected areas cleaned by a bio-wash technician.

After the hearing the tenant entered into evidence an e-mail dated November 6, 2018 which complained to the landlord about the unsanitary condition of the subject rental property.

The landlord testified to the following facts. After the clog was fixed the tenant became combative and would not allow the restoration company access to the subject rental property to complete the required repairs to the flooring and drywall. The landlord testified that the tenant told him that she would not allow access to the subject rental property until the landlord paid her for her pain and suffering. The landlord refunded November's rent to the tenant on November 9, 2018.

The landlord testified to the following facts. On November 27, 2018, the landlord posted a notice to enter the subject rental property on the tenant's door effective December 3, 2018, for required repairs (the "Notice"). The Notice advised the tenant to vacate the subject rental property from 9:00 am until 4:00 pm on December 3, 2018 while the work was completed. Witness A.W. testified that she was with the landlord when he posted the Notice on the door of the subject rental property on November 27, 2018. The tenant testified that she found the Notice on the floor on November 27th or 28th, 2018.

Both parties agree to the following facts. The tenant refused to open the door of the subject rental property on December 3, 2018 when the landlord and the restoration personnel attended at the subject rental property. The landlord opened the door with his key and the tenant called the police. The landlord waited for the police to attend but the restoration company had other work to attend to and left. The tenant informed the police that the water was not turned on. The police informed the landlord that the water was not turned on. The landlord called a plumber and had the water turned on, on December 3, 2018. To this date the tenant has not allowed repair people into the subject rental property to complete the repairs.

Analysis

Section 29 of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

I find that the tenant was sufficiently served for the purposes of this *Act,* with the Notice, pursuant to section 71 of the *Act* because she confirmed receipt of the Notice more than 24 hours prior to the date of entry.

I find that the landlord did not breach section 29 of the *Act* and provided proper notice of entry to the tenant.

Section 27 of the *Act* states that 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.

I find that water is an essential service of the tenancy; however, I find that the tenant did not make the landlord aware that the service was restricted. Based on the e-mails submitted into evidence by the parties, I find that the tenant did not inform the landlord

that she did not have water at the subject rental property as of November 8, 2018. I find that when the landlord learned that the water was shut off, he immediately rectified the problem. I find that since the landlord did not know of the problem, it cannot be found that he purposefully restricted or terminated the water supply to the tenant. I find that the landlord has not breached section 27 of the *Act.*

Since I have found that the landlord did not breach sections 27 and 29 of the *Act,* I dismiss the tenant's application, 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: December 19, 2018

Residential Tenancy Branch