Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FFT

Introduction

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

- an order requiring the landlords to complete repairs to the rental unit, pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female) and the two tenants (male and female) 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 male tenant ("tenant") confirmed that he had permission to represent the "female tenant," who did not testify at this hearing. This hearing lasted approximately 67 minutes.

The hearing began at 11:00 a.m. with only me and the tenants present. The two landlords called in late at 11:02 a.m. I informed the landlords about what occurred in their absence before they called into the hearing. The hearing ended at 12:07 p.m.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence package.

The tenant confirmed that the tenants would be vacating the rental unit on June 30, 2019. The tenant consented to the landlords being issued with an order of possession effective at 1:00 p.m. on June 30, 2019.

Since the tenancy is ending, the tenants' application for repairs and a future rent reduction, is dismissed without leave to reapply.

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 1, 2017. Monthly rent in the amount of $4,795.00 is payable on the first day of each month. Both parties signed two written tenancy agreements for two fixed term tenancies. The tenants continue to reside in the rental unit. The rental unit is the upper portion of a house, while the landlords occupy the basement suite of the same house.

The tenants seek a monetary order for a rent reduction of $3,072.72 plus the $100.00 application filing fee. The tenant claimed that the tenants were paying an additional $490.00 per month included in their rent for a telephone landline, internet, a security system and a parking spot. The tenant claimed that both written tenancy agreements, signed by both parties in 2017 and 2018, indicate that utilities, parking, and the security system were all included in rent to a maximum of $5,880.00 annually. He stated that the landlords were living in the basement of the same property, and that they were using the tenants' services when they were not notified the landlords would be living there. He said that the tenants should be paying less for these services, as part of their rent, because the landlords were also sharing them. He maintained that the landlords were supposed to be away for three years, not living at the rental property, and they return at different times and use the tenants' services.

The landlords claimed that they have always lived in the basement during the tenants' tenancy, with the exception of a six month period when another tenant was living in the basement, with full knowledge of the tenants. The landlords explained that they own the home, they do not have to tell the tenants when they are coming and going, and they have a right to live in their own basement because it has never been occupied nor

rented by the tenants. They stated that the tenants are well aware that the landlords have been living in the basement, even if they are away for periods of time due to work.

The landlords dispute the tenants' monetary claim. They stated that all utilities, the security system, and the internet are in their name and they are paying for the services, not the tenants. They provided proof of all of the above bills in the name of the landlords. They claimed that both parties agreed in both tenancy agreements, which were signed by both tenants and both landlords, that these services would be included in the tenants' rent. They said that there have been no problems or complaints with these services until they made a noise complaint against the tenants.

The landlords explained that the tenants gave notice on April 30, 2019, that they were not renewing the second tenancy agreement and would be moving out on June 30, 2019, and then the tenants filed this application to obtain a monetary order on May 1, 2019. The tenant confirmed that the landlords complained about noise against the tenants and he did not file this application earlier because he did not know his legal rights until he started researching the *Act* and *Residential Tenancy Regulation*.

The landlords confirmed that the security system is for the exclusive use of the tenants. They explained that they only deactivate the alarm in the basement suite while they are living there, not while they are away, so that it does not interfere with the tenants' ability to use the same system while the landlords are home. The tenant complained that this interferes with his safety, if the basement alarm is turned off.

The landlords confirmed that in the first tenancy agreement, the tenants had the use of one parking spot and no storage space. They claimed that in the second tenancy agreement, the tenants obtained use of ½ of the garage storage and two parking spots. They maintained that there were no complaints until April 2019, almost two years after they moved into the rental unit.

The landlords maintained that the internet was paid for by them, that it was part of the tenants' rent, and there were no problems or issues brought to their attention by the tenants. They confirmed that they had to reset the internet router a couple of times but that was normal.

The landlords testified that the telephone landline provided to the tenants was only in use from July 1 to 22, 2017, almost a one month period, before it had to be cancelled since it was not working properly and it was interfering with the internet. The landlords

stated that an agreement was made with the female tenant to cancel the telephone landline in exchange for the landlords foregoing the overage cap of $5,880.00 annually. They maintained that this was confirmed in an email on March 14, 2018 with the tenants' agent. They explained that nothing was said about the landline until April 2019.

The tenant agreed that the female tenant was advised that the telephone landline was having problems and that it was cancelled, but stated that she did not agree to the cancellation or the overages cap being removed.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for a rent reduction of $3,072.72, without leave to reapply.

I find that both tenants voluntarily signed two written tenancy agreements with the landlords in 2017 and again in 2018. In both agreements, the tenants consented to a fixed monthly rent, which included utilities, parking, the security system, and internet. I find that the landlords proved that they, not the tenants, pay for the above services, which are in their name. The landlords provided invoices and payments of such invoices, for this hearing.

I find that by consenting to these services being included in the monthly rent, the tenants cannot obtain money back for services they did not pay for. With the exception of the telephone landline, the tenants agreed that they were receiving these services from the landlords and they did not pay any additional costs for them, they only paid the monthly rent. The tenants' regret in signing two legal, binding, contractual tenancy

agreements or their ignorance of the law for almost two years, is no excuse and does not entitle the tenants to compensation.

I find that the basement of the rental property is not for the tenants' use, as they have never lived there, nor do they pay rent for it. Another tenant and the two landlords have lived in the basement during the tenants' tenancy. I find that the tenants knew that they would not have any use of the basement, that other people would be living there, and they still agreed to have the above services included in their monthly rent, when they signed both tenancy agreements in two separate years.

I further find that the female tenant agreed to forego the overage charges of $5,880.00 annually, in exchange for the telephone landline being disconnected by the landlords, since it was not working properly and was causing interference. The female tenant, even though present at the hearing, did not dispute this agreement, nor did she testify about it when she had the ability to do so. The tenant disputed the agreement but was not an original party to the initial conversation with the landlords.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the filing fee of $100.00 from the landlords.

Conclusion

I issue the attached Order of Possession to be used by the landlords **only** if the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2019. The tenants must be served with this Order in the event that the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2019. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The remainder of the tenants' 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: June 14, 2019

Residential Tenancy Branch