Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: MNDCT

Introduction

The tenant seeks compensation pursuant to 67 of the *Residential Tenancy Act* ("Act"). He filed his application for dispute resolution on August 29, 2020 and a hearing was held at 1:30 PM on December 10, 2020. Only the tenant attended the hearing, and he was given a full opportunity to be heard, present testimony, and make submissions. The landlord did not attend the hearing which ended at 1:51 PM.

In evidence were copies of a Canada Post Registered Mail receipt and tracking number showing that the tenant had sent a copy of the Notice of Dispute Resolution Proceeding package to the landlord in compliance with the Act. In addition, the Residential Tenancy Branch file indicates that the landlord submitted several pieces of documentary evidence. Based on this evidence and information I find that the landlord was served with the Notice of Dispute Resolution Proceeding and had been notified of the hearing.

Issue

Is the tenant entitled to compensation?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which is relevant to determining the issues. As such, I need not consider any documentary evidence that the landlord may have submitted, as he did not attend the hearing to present it. Only relevant evidence needed to explain my decision is reproduced below.

This was the briefest of tenancies: 38 days. And in that time, the tenant explained that there was no heat and an excessive amount of noise. In further detail, the tenant's application summarizes his claim, which is as follows:

> The landlord lied to me about several things during my rental there; the suite was illegal. First, there was no heat in the unit. Landlord assured me suite had radiant floor heating, which he previously disconnected prior to me moving. in. Secondly, he continued to use and make noise in his office, which was connected to my unit. I'll be submitting a form for loss of quiet enjoyment. Thirdly, I had to move out early to accommodate his new tenant, another lie. The unit was not cleaned either.

In addition, the tenant submitted a written summary, which concisely and clearly articulated the facts of this dispute (which are undisputed in the landlord's absence):

- No heat in unit. Landlord had it turned off to save money.
- Landlord blackmailed me to do "work/painting in my bathroom" - work which he didn't tell me he was going to do before I moved in. I get text after move in "stating I need to repair your bathroom." He would not let me move out / get damage deposit back unless I "painted and did drywall in the washroom."
- Section 28 loss of quiet enjoyment: both from landlord's office (connected to my unit), and from apartment next door. Noise all the time, nighttime, early morning.
- Dog barking every morning at IE 7 am, along with nighttime noise.
- Dead rat found and left on property for 10 days.
- Live rats in the garbage cans and on property.
- Incessant harassment from landlord IE texting, phone calling me 12 times in 1 hour.
- Then repeated knocking on my unit within same 1.5 hours (even though I was ill in washroom).
- Unit was not cleaned before I moved in. I had to move in.

The tenant seeks $1,142.21 in damages for having to stay in a hotel on two nights ($294.19), $40.00 for a taxi ride to the hotel, $200.00 for having to spend approximately 8 hours cleaning the rental unit in order to make it habitable, and, $700.00 for the tenant's loss of quiet enjoyment. Receipts were tendered into evidence for the hotel.

In respect of his claim for the hotel, the tenant testified and provided a written explanation which essentially said that the landlord was forcing him to move out earlier than they had previously agreed, which was supposed to be May 30, in order for a new tenant to move in. However, the landlord apparently changed his mind and "forced" the

tenant to move out earlier, necessitating the tenant's need to unexpectedly stay in a hotel for two nights.

It should be noted that several texts were submitted into evidence by the tenant, but many of these were not submitted until November 30, 2020, which is outside the 14-day minimal window within which evidence must be submitted pursuant to the *Rules of Procedure.* As such, I will not be accepting or considering these.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 28(b) of the Act states that

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: [. . .] (b) freedom from unreasonable disturbance;

In this case, the tenant's evidence is that the landlord and or the landlord's other occupants made constant noise, interfering with the tenant's ability to focus on his academic obligations and to sleep. Indeed, he explained that the "noise just never stopped." The tenant acknowledged that claims for loss of quiet enjoyment can be difficult to quantify, but, he argued that given the amount and frequency of disturbing noise that he endured that $700.00 (representing about half the rent) is a reasonable amount. I am inclined to agree. There is also, I find, not much a tenant can do to minimize such a loss; it is rather difficult to leave one's home to minimize being disturbed when there is a full-blown worldwide pandemic raging outside.

Thus, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for $700.00 for the landlord's breach of section 28(b) of the Act.

Next, section 32(1)(b) of the Act states that

> A landlord must provide and maintain residential property in a state of decoration and repair that [. . .] having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant described the state of the rental unit as follows (reproduced as written):

> When I moved in, inside of fridge/freezer is disgusting. Inside of fridge is broken. |Big giant dish inside that fills up with water – that I have to empty for the next 40 days. There is a blue film all over the place – frozen Windex (?) that took 1.5 hours to clean. Inside of cupboards are disgusting, caked in curry. 2 hours just to cupboards. The closet is caked with a yellow stick film all over the shelves. Nowhere to put my clothes besides these shelves....2 hours just for the closet.
>
> Bottom of toilet – moved the garbage can – urine was caked so thick – you could take a spatula and get about 2 inches of it. All around toilet caked in disgusting toilet matter. Underneath toilet lid also filled with feces and urine stains.
>
> It took me 8 hours to clean that apartment.

Based on the tenant's undisputed evidence, I find that the landlord did not provide a rental unit that was suitable for occupation by a tenant. The landlord, I must conclude, breached his obligation under section 32(1)(b) of the Act and the tenant suffered a loss of 8 hours of cleaning time to make it suitable for habitation. $25.00 an hour at eight hours is a reasonable amount to be claimed for the tenant's loss.

Therefore, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for cleaning costs of $200.00.

In respect of his claim for having to stay in a hotel, I am not persuaded that the landlord breached the Act that might give rise to compensatory damages. While the tenant argued that the landlord "forced" him to vacate early, the tenant was under no legal obligation to in fact vacate the rental unit before the date that he and the landlord had previously agreed. As such, there can be no breach of the Act simply because the tenant agreed (albeit very reluctantly, I must admit) to leave early and stay in a hotel.

Therefore, based on the tenant not proving that the landlord breached the Act, I cannot find on a balance of probabilities that the tenant is entitled to compensation. As a result, I dismiss the tenant's claims for compensation related to the taxi and the hotel.

In summary, however, I award the tenant $900.00 in compensation. A monetary order is issued in conjunction with this decision, to the tenant.

Conclusion

The tenant's application is granted, in part.

I grant the tenant a monetary order for $900.00, which must be served on the landlord. If the landlord does not pay the tenant within 15 days of receiving the order, the tenant may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 10, 2020

Residential Tenancy Branch