Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNDC, OLC, RP, PSF, RR, & FF

Introduction:

These hearings dealt with cross applications by the parties. The dispute revolves around the written and oral agreements reached when the tenancy commenced and whether each party has fulfilled the obligations set out in those agreements. Each party is seeking compensation due to a breach of contract by the other. The tenant is also seeking orders for the landlord to complete repairs set out in the agreements made at the start of the tenancy.

Both parties provided extensive written submissions, presented witnesses, and had the opportunity to cross examine the evidence and witnesses of the other party. All witnesses provided affirmed evidence.

I also have granted a review consideration of the landlord's application on file #722098, which was heard on October 24, 2008 and dismissed. The landlord and tenant both failed to appear for the scheduled hearing and the Dispute Resolution Officer (DRO) issued a decision dismissing the landlord's application on the same day. The landlord filed an application requesting a review of this decision on October 31, 2008 pursuant to section 79 of the *Act* on the basis that there were circumstances beyond her control and which could not be anticipated which prevented her from appearing for the scheduled hearing. Pursuant to section 82 of the *Act* I granted the landlord's request for a review and ordered that it be heard jointly with the tenant's application scheduled on November 3, 2008 and December 8, 2008. I accept that neither party appeared for this scheduled hearing due to an administrative error on the part of the *Residential Tenancy Branch*.

Issues to be Determined:

What were the obligations of the landlord and the tenant arising out of the addendum to the tenancy agreement respecting the installation of a concrete side walk, railing, outside lighting and replacement of carpeting in the rental unit?

Is either party entitled to a monetary claim related to breach of contract?

Should the landlord be ordered to complete repairs to the rental unit?

Background and Evidence:

This tenancy began on April 1, 2008 for a fixed term of 5 years. The monthly rent is $1,225.00 and the tenant paid a pet deposit and security deposit totalling $1,225.00 on May 5, 2008. This tenancy agreement was made through negotiations over some time dealing with changes to the landlord's property which would make the rental unit suitable for the tenant's home business. As part of the tenancy agreement the parties also made an addendum respecting these changes to the property. The addendum is undated and unsigned but referenced in the tenancy agreement signed on February 27, 2008.

The rental unit is comprised of two basement units which can be separately rented. However, for the monthly rent of $1,225.00 the tenant occupies both the suites for personal accommodation and the operation of her home business.

A condition of the tenancy revolved around the following changes to the property that the tenant believed would be required for her to agree to enter into this tenancy agreement:

1. Installation of a new concrete side walk running from the front of the property, down and around to the entrance of one of the suites rented by the tenant;
2. Installation of a short railing at the shallow steps of this new sidewalk;
3. Installation of sufficient outdoor lighting for this new sidewalk and entrance of suite; and
4. The apparent agreement that sometime in 2008 (summer) the carpets would be replaced in the rental unit.

The landlord's and tenant's evidence leading up to the start of the tenancy until receipt of the bill received for installation of the outdoor lighting system was relatively consistent. It was clear that there were discussions about renting the unit over several months which included the changes to the landlord's property to make the rental unit suitable for the tenant's home business. There was relative agreement that the sidewalk and lighting were completed prior to the tenant taking possession of the rental unit.

Each party sought to establish that the other was the predominant actor in pursuing the rental of the suites. Each party sought to establish that the other fraudulently modified the content of the addendum respecting the agreement of how the costs of modifications would be paid.

There appeared to be discussions about the replacement of the carpets in the rental unit which were initially to be completed prior to the tenant occupying the rental unit and then a new date for completion of new carpets was communicated to the tenant through a mutual friend. This individual was also a go-between during the discussions leading to the tenancy agreement and the addendum respecting the modifications to the property.

From the evidence before me, I am satisfied that the tenant originally declined the rental unit as she felt it would not be suitable for both living accommodation and for her home business. Both parties acknowledge that the addendum respecting the modifications to the property was not dated or signed.

It was also consistent evidence between the parties that the relationship and arguments around the costs for the modifications did not start until the tenant was presented with the cost for the installation of the lights.

Out of the witnesses brought forward by the parties, I found only the evidence of the witness, who I will referred to as MW, to be relevant to determining this issue. All other witnesses presented by both parties did not have first hand knowledge of the discussions preceding the tenancy and only presented hearsay opinions respecting the further deterioration of the relationship between the landlord and tenant.

Witness MW provided affirmed evidence that she knew both the parties, had assisted in the discussions leading to the tenancy agreement, and had direct knowledge of the discussions surrounding the modifications of the property. MW confirmed that the tenant originally rejected the rental unit as being unsuitable; however, she stated that the tenant approached her again about renting the unit after other attempts to find suitable accommodations were unsuccessful. MW stated that it was essential to the tenant that changes were made to the rental unit for the purposes of her home business. MW stated that she suggested that they approach the landlord with the proposal that all the costs for these modifications be shared equally in an attempt to reach an agreement. MW stated that she spoke with the landlord about this agreement and the landlord agreed. MW stated she called the tenant back indicating that they had reached an agreement. MW confirmed that the tenant willingly paid 50 percent of the cost of installing the new concrete sidewalk and that the relationship deteriorated after the landlord provided the tenant a copy of the bill for the installation of the lighting system.

The tenant submitted that the landlord failed to honour the addendum to complete the modifications as agreed to before the tenancy started. The tenant argued that she only agreed to pay for 50 percent of the cost of the installation of the side walk and not 50 percent of all the modifications. The tenant also submitted that the landlord has failed to install new carpets as agreed to by August 15, 2008.

In addition, the tenant submits that the landlord has restricted services by failing to complete the modifications as the installation of the railing is not complete and the outdoor lighting has been turned off. The tenant also wants the carpets to be installed as agreed to and wants to be reimbursed the cost she paid for the completion of the sidewalk, as it is her understanding that as a tenant she is not responsible for modifications to the property. The tenant seeks a rent reduction due to the loss of these services.

The tenant also brought forward additional requests for repairs. I decline to consider these issues as they developed after the parties' initial applications for dispute resolution. The issue before me is the terms of the tenancy agreement and the issues surrounding the addendum for the modifications.

The tenant also has requested the return of her security and pet deposits. There is no basis under the *Act* to return the deposits outside of the end of the tenancy relationship. The issue before me is not related to the end of this tenancy and therefore I decline the tenant's request.

The landlord submits that it was the tenant who pursued a tenancy agreement and requested the modifications as a requirement of reaching an agreement. The landlord submits that it was the tenant who wrote the addendum and that the tenant agreed all along to cover 50 percent of the cost of all the modifications. The landlord denies any agreement to replace the carpets in the rental unit and stated that she only indicated that at some point this might be done. The landlord submits that once the dispute began the tenant pursued this issue demanding what type and quality should be put in and seeking a date for completion. The landlord states that she would not have agreed to installation of expensive flooring due to the tenant having two pets.

The landlord also provided expert evidence respecting the tenant's allegations that she fraudulently modified the addendum. The landlord provided a polygraph testing report which she submits corroborates her evidence that the agreement was always that all the costs would be shared equally.

The landlord seeks to have the tenant honour their agreement by paying for the outstanding costs associated with completing the modifications to the rental property.

Analysis:

The aspects of this dispute, including the issues arising during and following this dispute, all revolve around one central issue; what was the agreement between the parties before the tenancy began respecting modifications to the property? I find it irrelevant who pursued who in reaching a tenancy agreement, as I find it more likely that both participated equally in reaching some agreement which would satisfy each others needs. I find this determination is supported by the cooperation and friendly terms the parties had until the tenant received the bill for installing the outdoor lighting. Up to this point, each party appeared satisfied with the terms of their agreement and the landlord/tenant relationship.

Of all the evidence before me, I found there to be a central theme to the agreement. I am satisfied that for the parties to reach an agreement the tenant wanted changes made to the property to satisfy her home business requirements. This included the new sidewalk which would be more accessible and an easier slope and safety requirements for the sidewalk including a short rail at the steps and appropriate lighting. I should add that there is an existing sidewalk leading to the tenant's suites; however, this sidewalk was not considered appropriate to meet the tenant's safety concerns.

The dispute centres on whether the tenant agreed to pay 50 percent of all the costs associated with the modification or only 50 percent of the installation of the sidewalk. In this respect each party alleges that the other has reneged on the written agreement and written addendum. Although I find the different versions of the addendum to be troublesome, neither party presented any evidence to reach a sound conclusion as to which version is the original. In the absence of a date or signatures, I find the addendum to be of little value in determining the true version of the agreement reached between the parties. I find this especially true given the addendum was written after the fact by the tenant. Therefore, the issue comes down to which version of the addendum is the most consistent with the overall sequence of events.

In assessing the credibility of the landlord and the tenant, including if either one had any benefit to altering the addendum, I must consider the conflicting evidence of the landlord and tenant in the context of how their evidence is consistent with the overall events. Given the evidence, what reasonable inference can be reached about the agreement given reasonable conclusions considering the overall events?

For example, what motive would the landlord have for making significant and expensive modifications to her property? Especially given that the property already had a suitable sidewalk running to the entrance of the rental unit. The tenant argues that the landlord was willing to go to this expense on the basis that she was unable to rent the suites in any other circumstances. Alternatively, the landlord argues that the tenant had a clear motive to come to this agreement for the purposes of meeting standard health and safety requires operate her home business.

From the perspective of motivating factors leading to the nature of the verbal agreement between the parties, I am not satisfied that the landlord had any other reason to make these modifications than at the request of the tenant. Alternatively, the tenant had a clear need for these modifications to be completed to satisfy her living and business needs. I am not satisfied that the landlord would agree to such significant modifications to her property due to being unable to find other tenants. There was no evidence before me to suggest that the landlord had any financial motivation or desperation to find a tenant. In fact, the evidence suggests that the rent was lower than what the landlord could normally obtain if the two suites had been rented separately.

I am satisfied on the balance of probabilities that the tenant required these modifications for her home business and had the driving motive to come to an agreement with the landlord to make these modifications to the property. On the balance of probabilities, I am satisfied that the landlord would only agree to pay for 50 percent of the modifications as they were of no benefit to her. I accept that the landlord had the means and inclination to come to an agreement with the tenant which was solely to the tenant's benefit. In exchange, the landlord did secure a long-term tenant given that the tenancy agreement was for a fixed term over five years.

It is therefore my conclusion that the parties came to the agreement that the cost of modifications would be shared equally. I find that the tenant only disputed and questioned this agreement once the cost of the modifications became a burden. This conclusion is supported by the fact that the relationship and agreement did not deteriorate until the cost of installing the lighting was received. Up to this point, the cost of the new sidewalk was reasonable to the tenant. I am satisfied that had the bill for the cost of installing the lighting been received earlier, this dispute would have precipitated at the time the work was completed, rather than several months into the tenancy.

As stated above, I have accepted the evidence of MW as being consistent with the overall context and circumstances leading to the agreement between the landlord and tenant and I find this witness' evidence corroborates the landlord's version of events.

On the preponderance of the evidence before me, I accept the evidence of the landlord over that of the tenant. I find that the landlord's version of events to be consistent with

reasonable inferences arising from the circumstances and events leading to the verbal agreement reached by the parties.

I also accept the landlord's evidence that the changes to the rental property were confined solely to the installation of the sidewalk, railing and lighting system. I accept there may have been general discussions about replacing the carpets, however, I am not satisfied that there was any firm commitment by the landlord. However, I note that the replacement of carpets was an additional part of the written addendum. From this I am satisfied that the landlord agreed to replace the carpets. By accepting the replacement of the carpets in the addendum I find that the landlord is responsible for completing this work as agreed. I find that there is no evidence that the landlord agreed to replace any other type of flooring in the rental unit as claimed by the tenant.

I note that the tenant is making demands as to the type and quality of the new carpet. These are not demands that the tenant can make. It is the sole discretion of the landlord to choose what she will replace the carpet with in the rental unit. The tenant is responsible to accommodate the installation work, including moving her furniture and possessions as necessary, at her own expense.

As a result of my determinations I find as follows:

1. I deny the tenant's application for dispute resolution requesting that she be reimbursed for the payment of 50 percent of the cost of installing the side walk;
2. I Order that the tenant pay 50 percent of the cost to install the outdoor lighting of the sidewalk for the sum of $1,093.15;
3. I Order that the tenant pay for 50 percent of the cost of the installation of the railing as agreed to. The tenant may decide to not have the railing installed if she wishes; however, if it is installed, the landlord is to provide three estimates and the tenant must pay 50 percent of the lowest estimate;
4. I find that the landlord has an obligation to replace the carpets in the rental unit as documented in the addendum and I Order that the landlord completes this repair within **three (3) months** of the date of this decision. The landlord has the sole discretion of the type of the carpet to be installed and the tenant must accommodate the installation and cover any related expenses ;
5. I find that the landlord must re-connect the outdoor lighting for the sidewalk once the tenant has paid the outstanding sum owed;
6. I deny the tenant's request for a rent reduction as I find she failed to fulfill her obligation to pay the landlord 50 percent of the costs associated with the outdoor lighting;
7. I Order that the tenant reimburse the landlord the $50.00 filling fee paid for the landlord's application; and
8. I deny the tenant's request for repairs to the rental unit with leave to re-apply. I grant the landlord time to address the tenant's request for repairs to the sink and bathtub stoppers. After a period of time 30 days has passed, the tenant may file a new application for these repairs to be completed. I find that the landlord has no obligation to provide the tenant with fire extinguishers as long as the rental unit has suitable and standard smoke detectors.

In support of my determinations I find that the landlord has established a total monetary claim for the sum of **$1,143.15**. I grant the landlord a monetary Order for this sum which may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I deny both parties' request for recovery of their costs to pursue their applications including notary fees, registered mail costs and the landlord's request to recover the cost of the polygraph test. These expenses are part of pursuing their claim and are non-recoverable.

Conclusion:

I dismiss the tenant's application for dispute resolution. I grant the landlord's application in part and made findings of fact respecting the written addendum between the parties regarding modifications made, and to be made, to the property.

Having made findings of fact regarding the terms of the addendum, I hope that the parties can now resolve the subsequent issues that have arisen. However, in the absence of settling these disputes both parties have the discretion to file further applications for dispute resolution.

Dated January 05, 2009.

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Dispute Resolution Officer