Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, CNR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew her application for an Order of Possession, as the rental unit has been vacated.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy and for a monetary Order for money owed or compensation for damage or loss. At the hearing the Tenant withdrew his application to set aside the Notice to End Tenancy, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

At the hearing the Tenant attempted to make a claim for compensation for damage to his vehicles. Although he makes reference to damages to two vehicles in written documents he submitted in evidence, and he claims damages in the amount of $1,475.00, this monetary claim is not clearly outlined on his Application for Dispute Resolution, in which he claimed total damages of $649.00. I declined to hear this portion of the dispute, pursuant to section 59(2)(b) of the *Act,* as the full particulars of this monetary claim were not clearly outlined on the Application for Dispute Resolution.

The Tenant retains the right to file another Application for Dispute Resolution in regards to his claim for damages to his vehicles**.** The Tenant is reminded, however, that the *Residential Tenancy Act (Act)* applies to tenancy agreements, rental unit and other residential property. The director only has the authority to order a landlord to pay compensation to tenants for damage or loss that results from the landlord not complying with the *Act*.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to a monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act).*

The issue to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to a monetary Order for money owed for overpayment of rent, overpayment of hydro costs, and for clearing snow, pursuant to section 67 of the *Act.*

Background and Evidence

The female Landlord stated that this tenancy began in November of 2004 and the Tenant stated that the tenancy began on November 04, 2005. The Landlord submitted a copy of a tenancy agreement that was originally dated November 01, 2004 but was amended to December 01, 2004. The female Landlord stated that the Tenant signed this tenancy agreement. The Tenant stated that the signature on the rental agreement is not his.

The tenancy agreement indicates that the rent is $500.00 per month and both parties agree that the rent has remained at $500.00. The agreement specifies that rent is due on the first day of each month. The tenancy agreement specifies that hydro is included "to a minimum". It specifies that things like "electric heaters, portable dishwashers, lights left on, waterbeds, etc. power suckers will make a difference in the regular bill and the *Tenent* will be required to pay the difference".

The Landlord and the Tenant agree that the Landlord asked the Tenant to sign a new written tenancy agreement in March of 2006, which specified that the Tenant would be responsible for 25% of the hydro costs. The parties agree that the Tenant refused to sign this tenancy agreement.

At the hearing, the Tenant acknowledged that he verbally agreed to pay 25% of the hydro costs. The female Landlord stated that the Tenant agreed to pay more than 25% "a couple of times in the winter months" because he was using electric heat. The Tenant stated that he never agreed to pay more than 25%, although he acknowledged that he sometimes did pay more because he believed he had no recourse.

The Landlord and the Tenant agree that the Tenant did not pay rent for March of 2009, and the Landlord is seeking a monetary Order for the rent that is due for that month. The parties agree that the Tenant vacated the rental unit on April 12, 2009.

The Tenant submitted a copy of hydro bill for the period between October 11, 2006 and December 05, 2007, in the amount of $402.54. The Landlord and the Tenant agree that the Tenant paid $161.00 towards this bill, which is 40% of the bill. The Tenant contends that he should have only paid $100.63, and he is seeking the return of the overpayment of $60.37.

The Tenant submitted a copy of hydro bill for the period between December 07, 2006 and January 31, 2007, in the amount of $549.56. The Landlord stated that the Tenant paid $138.00 towards this bill and the Tenant stated that he paid $274.78 towards this bill. Both parties are basing their statements on notations on the hydro bill. The Tenant contends that he should have only paid $137.39 and he is seeking the return of the overpayment of $137.79.

The Tenant submitted a copy of hydro bill for the period between December 07, 2007 and February 06, 2008, in the amount of $527.12. The Landlord and the Tenant agree that the Tenant paid $200.00 towards this bill, which is 37.9% of the bill. The Tenant contends that he should have only paid $131.78, and he is seeking the return of the overpayment of $68.22.

The Tenant is claiming compensation, in the amount of $325.00, for the cost of removing snow from a common driveway on the residential property. The Tenant stated that he hired someone on three occasions to clear snow from a portion of the common driveway that he shares with the Landlord. He stated that he cleared the snow on all three occasions without first asking the Landlord to clear the snow or without asking for authority from the Landlord to hire someone to clear the snow.

The Landlord stated that the she hares a common driveway with the Tenant and that her residence is past the rental unit. She agreed that the Tenant had snow removed from the portion of the common driveway that leads to his rental unit. She stated that they live on the mountain and they regularly contend with snow, however she stated that they cleared snow from the driveway when snow prevented them from accessing their residence. She stated that the Tenant cleared the snow on the first portion of the common driveway without authorization from the Landlord.

The Tenant requested an adjournment to provide him with time to obtain receipts from the people he hired to clear the snow. As the Landlord does not dispute that the Tenant hired someone to clear the driveway, and the actual cost of clearing the driveway is not

relevant to my decision in these circumstances, I denied the Tenant's request for an adjournment.

The Tenant is requesting compensation, in the amount of $49.98, in compensation for three days rent. He contends that he did not move into the rental unit until the fourth of the month because the former tenant had not vacated the rental unit, and that his rent is therefore payable on the fourth day of each month. The Landlord stated that this tenancy began so long ago that she cannot recall precisely when the Tenant moved in, although she stated that the rental unit was vacant prior to the beginning of the tenancy so she does not know why he would not have moved in on the first day of the month. She noted that the tenancy agreement is dated December 01, 2004 and that it stipulates that rent is due on the first day of each month.

Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement on, or about, December 01, 2004, which required the Tenant to pay monthly rent of $500.00. In reaching this conclusion, I relied heavily on the written tenancy agreement that was submitted in evidence by the Landlord. Although the Tenant contends that he did not sign this tenancy agreement, I find that the signature on the agreement is remarkably similar to other documents that were submitted by the Tenant, which bear the Tenant's signature and I find, on the balance of probabilities, that the Tenant did sign the tenancy agreement.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord, whether or not the landlord complies with the *Act*, unless the Tenant has a right under the Act to deduct a portion of the rent. The evidence shows that the Tenant did not pay rent for March of 2008, as is required by the tenancy agreement and the *Act*. No evidence was submitted to show that the Tenant had the lawful authority to withhold any portion of the rent, and I therefore find that the Tenant must pay $500.00 in rent for March of 2008.

I find that the Landlord and the Tenant verbally agreed to alter the terms of the tenancy agreement in regards to hydro. Specifically, I find that the Tenant agreed to pay 25% of the hydro bill. I find that this issue is not in dispute, as both parties agreed that they verbally amended this term of their tenancy agreement.

I find that the Landlord submitted insufficient evidence to establish that the Tenant agreed to pay more than 25% at any time during the tenancy. In reaching this conclusion, I was strongly influenced by the Tenant's statement that he did not agree to this amendment, and the absence of evidence that corroborates the Landlord's statement that he did agree to this amendment. As the Landlord has not clearly

establish that the Tenant verbally agreed to pay more than 25% of the hydro bill, I find that the Tenant is under no obligation to pay more than 25%.

I find, based on the mutual agreement between the parties, that the Tenant paid $161.00 for the hydro bill in the amount of $402.54. As the Tenant was only required to pay 25% of the bill, which is $100.63, I find that he is entitled to reimbursement in the amount of $60.37.

I find, based on the mutual agreement between the parties, that the Tenant paid $200.00 for the hydro bill in the amount of $527.12. As the Tenant was only required to pay 25% of the bill, which is $131.78, I find that he is entitled to reimbursement in the amount of $68.22.

I find, on the balance of probabilities, that the Tenant paid $274.78 for the hydro bill in the amount of $549.56. I based this conclusion on the notations on the three hydro bills, which in all cases are consistent with the information provided by the Tenant. I specifically note that the amount $274.78 is written directly above the Landlord's request to have the payment to her by March 1st. As the Tenant was only required to pay 25% of the bill, which is $137.39, I find that he is entitled to reimbursement in the amount of $137.79.

Section 32(1) of the Act requires landlords to maintain residential property in a state that complies with health, safety, and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find there is insufficient evidence to show that the Landlord did not comply with section 32(1) in regards to snow removal. In reaching this conclusion I was strongly influenced by the fact that the Landlord use the common driveway to access their home, which causes me to conclude that they would clear snow when necessary. I was also influenced by the fact that this property is in a mountainous region that regularly contends with snow during the winter months, and it is not unreasonable to expect some snow-related inconveniences.

In reaching this conclusion, I was primarily influenced by the fact that the Tenant did not ask the Landlord to have snow cleared from the driveway, at which time the Landlord would have had the opportunity to determine whether the driveway required cleaning and, if necessary, to clear the driveway herself. In these circumstances the Tenant acted without authority of the Landlord and, in my view, is therefore responsible for the costs of removing the snow.

I note that section 33(1) of the *Act* authorizes tenants to make "emergency repairs" in certain circumstances. Prior to making an emergency repair a tenant must make at least two attempts to contact the landlord by telephone and then give the landlord

reasonable time to make those repairs. Snow removal in these circumstances does not constitute an "emergency repair" which, therefore, requires an even hire standard of notification.

On this basis I dismiss the Tenant's application for compensation for costs he incurred for clearing snow from the driveway.

There is a general legal principle that requires the places the burden of providing that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In relation to compensation for three days of rent, the burden of proof rests with the Tenant who is claiming that he suffered a loss because he did not get access to the rental unit until the fourth day of the month. As the two parties do not agree on the date that the rental unit was available for occupation, the onus is on the Tenant to prove that he was unable to move into the rental unit on the first of the month. I find that the Tenant has submitted no evidence to corroborate his statement that the rental unit was not available for occupation on the first of the month and I therefore dismiss his application for compensation for three days rent.

I find that the applications of both parties have merit, and I therefore find that each party shall be responsible for the cost of filing their Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of $500.00, for unpaid rent.

I find that the Tenant has established a monetary claim, in the amount of $266.38, for overpayment of hydro.

I have offset the two monetary claims and I grant the Landlord a monetary Order for the balance of $233.62. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: April 22, 2009.