Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, ERP, PSF, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlords provide services or facilities required by law; and to recover the filing fee from the landlords for the cost of this application.

The first named landlord and the tenant both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All testimony and information provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
Is the tenant's application for an order that the landlords make emergency repairs for health or safety reasons justified?
Is the tenant's application for an order that the landlords provide services or facilities required by law justified?

Background and Evidence

This month-to-month tenancy began on September 15, 2009 and ended on December 19, 2010. Rent in the amount of $800.00 per month was payable in advance on the 1st day of each month, as well as $50.00 per month for hydro, and there are no rental or hydro arrears. The landlord did not collect a security deposit from the tenant.

The tenant testified that she moved into the landlord's residence on September 15, 2009. No move-in condition inspection report was completed. She had done some cleaning for the landlord prior to the commencement of this tenancy, and he paid her $25.00 per hour for that service. When she moved into this unit, she had to clean it, and claims reimbursement at the same rate.

The tenant also testified that the landlord had told her at the beginning of the tenancy that he was away for about 6 months of the year, and another tenant on the property would look after things while he was away. He also stated that he had a list of contractors that the other tenant could call upon if necessary.

At the end of November, 2009 or beginning of December, 2009 the water in the faucets turned brown. The tenant contacted the other tenant, as instructed by the landlord, and told her that she could not run a bath due to the mud. The other tenant went into the pump house but was unable to correct the problem and asked the tenant to email the landlord, which she did. He responded to that email stating that he did not have a designated plumber and that she should find one, pay the plumber and he would reimburse her. The tenant testified that she had difficulty finding a plumber, but found one through a friend and the plumber emailed the landlord stating that the pump was submerged in water and was pumping mud. Also, there was no filter in the pump; the plumber installed one and said the water pressure would change and brown water may appear, meaning it would need another filter. He also needed the landlord's permission to test the water. It cost $300.00 for the filter system, and the tenant only had $200.00 which she gave to the plumber and he agreed to get the balance from the landlord. The landlord has reimbursed the tenant for the $200.00.

When the landlord returned in April, 2010 the tenant told him that he had to pay the plumber and have the water tested. Before he left again the tenant told him about the lack of water pressure, and he snapped at the tenant stating, "That's as good as it gets."

In November, 2010 the tenant emailed the landlord's son who was handling things for his father saying that the water was brown and all tenants on the property were without water pressure. The son called the tenant stating he would get a plumber and took the tenant some water. Plumbers couldn't attend right away but when they arrived they said it was the worst situation they had seen. A water sample was taken on November 30, 2010 instigated by the landlord's son.

On December 6, 2010 the tenant called the plumber inquiring about the water test results. All they could tell her is that the water was contaminated, and advised her not to brush her teeth or drink the water or bath a baby in it. She was also advised to boil the water well before cooking with it. Further, if the water became clear, that would not

mean it was not contaminated. The landlord and his son were notified, but they did not contact the tenant at all. The next day she called VIHA and received more information from Service Canada and then she spoke to the other tenants warning them of the contamination.

Plumbers arrived to change the filters but they told the tenant it would not solve the problem. The next evening, the landlord's son called the tenant to ask how the water was, and she replied that it was clear but contaminated. He told her his dad told him never to drink it.

The landlord emailed the tenant on December 8, 2010, and the tenant testified that that was the first time the landlord had contacted her. On December 10, 2010 she asked the plumber if he had the authorization to complete the work and he replied that he did not have that authorization, so she gave her notice to vacate the rental unit and asked to be reimbursed for 2 month's of rent. The landlord told her that he had arranged for the work to be done, however the tenant had taken a sample to VIHA for testing on December 14, 2010 and it was still contaminated. The tenant provided copies of emails exchanged between the parties on December 10 and December 12, 2010.

The tenant claims $200.00 to replace the linens damaged by the brown water. She stated that she is a hypnotherapist and her friend is a massage therapist so they have lots of white towels that had turned brown and could no longer be used for the businesses, although no evidence of that cost has been provided. The tenant also claims the equivalent of 2 month's rent, or $1,600.00 as compensation for loss of water, $375.00 for cleaning the rental unit when she moved in, being $25.00 per hour for 15 hours, and $150.00 for her time to get a plumber and coordinating her time with the plumber's.

The landlord stated that he was calling into the conference call from Asia. He testified that there was no agreement in place with respect to linens or a plumber.

He further testified that he had problems getting plumbers or quotes for services. On December 15, 2010 he returned from Asia and installed a U.V. filter on December 18, 2010. He stated that he tells all tenants that he does not drink the water and they shouldn't either. He stated he did all he could.

The landlord's email on December 12, 2010 also states that because the tenant wanted to leave the rental unit, he agreed to waive the 1 month's notice required under the *Act,* thereby compensating her $850.00. He further stated that he and the tenant did not have an agreement for cleaning, and if that were an issue it ought to have been raised at the outset of the tenancy.

Analysis

Firstly, I find that the first named landlord is in fact the landlord, and the second named landlord is the son of the landlord and not a landlord. Therefore, I dismiss the tenant's application as it relates to the second named landlord.

I also find that the copies of emails exchanged between the parties and provided by the tenant prior to the commencement of the hearing corroborates the evidence that the landlord waived the 1 month's notice from the tenant as required under the *Act;* the landlord's email is dated December 12, 2010 and the tenant vacated the rental unit on December 19, 2010. Therefore, I find that the landlord has already compensated the tenant $800.00.

With respect to the tenant's application for an order that the landlord make emergency repairs for health or safety reasons, the tenant is no longer residing in the unit, and therefore does not require that order. That portion of the application is hereby dismissed.

Similarly, the tenant's application for an order that the landlord provide services or facilities required by law is no longer sought by the tenant and that portion of the application is hereby dismissed.

With respect to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, I refer to the *Residential Tenancy Act*:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

And further,

> **32** (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In the circumstances, I find that the landlord was remiss in not dealing with the water issue early into the tenancy. I accept the landlord's evidence that he has never represented that the water was safe to drink, but I have no evidence before me that he ever told the tenant it was not safe to drink. The earliest evidence of that is the tenant's evidence that the landlord's son told her that his dad always told him to not drink the water, and that conversation took place in December, 2010, more than a year after the tenancy began. I also accept the evidence of the landlord that he asked the plumbers to conduct a chlorine shock treatment, but that as well was not done until December, 2010. The tenant told the landlord of the problem in December, 2009.

I also find that the water problem seemed to be sporadic. The tenant told the landlord of the problem originally in December, 2009. Her email to the landlord stating that water changed color the first week of November is dated December 10, 2010.

Because of Section 32 outlined above, I cannot accept the evidence of the landlord that if the tenant expected to be compensated for the time involved with dealing with plumbers she ought to have clarified that at the commencement of the tenancy. That is the responsibility of the landlord, not the tenant.

In the circumstances, I find that the landlord did not comply with Section 32 of the *Residential Tenancy Act,* and I find that the tenant's application for 2 month's rent as a reduction or devaluation of the tenancy is reasonable, however, as stated above, I find that the landlord has already compensated the tenant 1 month's rent. The tenant is therefore entitled to compensation in the amount of $800.00. The tenant is also entitled to recovery of the $50.00 filing fee for the cost of this application.

I accept the evidence of the tenant that she spent several hours cleaning the rental unit at the commencement of the tenancy however I also agree with the landlord that there was no agreement in place between the parties with respect to payment for that service. Therefore, the tenant's application for $375.00 for cleaning must be dismissed.

With respect to the tenant's application for $200.00 for spoiled linens, the tenant has not provided me with any evidence of the cost for replacing those items, and therefore that portion of the tenant's application must also be dismissed.

Conclusion

For the reasons set out above, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the total amount of $850.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: February 4, 2011.

Residential Tenancy Branch