Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD, MNDC and FF

Introduction

This decision results from a reconvened a Review Hearing of March 16, 2011 which was adjourned as scheduling had allowed insufficient time for service of the Notice of Hearing and exchange of evidence.

As noted in my Interim Decision of March 16, 2012, the Review Hearing was granted on the landlord's application for a review of my Decision of January 20, 2012 which was not attended by the landlord. The tenant was granted a Monetary Order of $1,546.35 for moving expenses, loss of quiet enjoyment and doubled portion of the security deposit the tenant claimed was improperly withheld.

Claims for loss of use of a garage and payment of the first month's rent at the tenant's new rental unit were dismissed as unproven and unwarranted respectively.

Issues to be Decided

This application now requires reconsideration of the awards granted in my original decision for return of the portion of security and pet damage deposits, loss of quiet enjoyment and moving expenses.

Background and Evidence

My original decision erred in stating that the tenancy which began on August 3, 2008 ended on September 1, 2011, herein corrected to an end date of September 30, 2011. Rent was $575 per month.

The tenant actually gave late notice on September 9, 2011 to vacate on September 30, 2011 and the landlord accepted the late notice.

Based on documentary and oral evidence presented by the parties in the Review Hearing, I have reconsidered the awards granted in the original hearing of January 20, 2012 as follows:

Return of balance of the security and pet damage deposits - $103.75 x 2. Based on a copy of the rental agreement and confirmed in an exchange of emails between the landlord and tenant dated July 5, 2008 submitted into evidence by the landlord, the tenant concedes that she erred in claiming to have paid $361.50 in deposits. The landlord's proof of this erroneous claim led to the granting of this review hearing on the grounds of fraud.

I find that the $257.50, including interest, returned by the landlord at the end of the tenancy fully settled the matter of the security and pet damage deposits and the doubled claim of $207.50 is struck from my original decision.

Emotional stress & upheaval - Unspecified. In my original decision, based on the evidence of the tenant alone in the absence of the landlord, I awarded the tenant $1,000 for loss of quiet enjoyment under section 28 of the *Act* on the claim that the landlord had carelessly failed to have the aging gas furnace repaired, resulting in extreme stress for the tenant.

The tenant had submitted into evidence an invoice from a service provider from September of 2008 who was called when she was disturbed by noises coming from the furnace. The invoice cited deficiencies in the furnace and recommended its replacement. The landlord stated that the tenant had relayed to him a message from the service provider estimating $10,000 replacement costs. The landlord stated that because the estimate was so high, he was highly skeptical of the service provider's motivation and he had subsequently had the furnace replaced in September of 2011 for $,4,392.85.

The landlord had the tenant deduct the $73.50 service fee for September 2008 from the rent.

The tenant stated that she had implored the landlord from that time to have the furnace replaced, but the next written reference appears in on December 14, 2010 at which time the parties exchanged emails on the question. The landlord enquired as to whether the furnace guy had gotten the furnace working.

The tenant stated he had been there the day before and had advised that the furnace was beyond repair and its useful life was limited from three weeks to three months. He recommended that it be replaced in the spring as it would not last another winter. The tenant's email concluded with, "....would you consider a new furnace for us next year as you have notice rent is always paid earlier and on time and we have no intentions of moving we are consider long term tenants and do not request too much receipts are in the mail thanks...." (reproduced as written).

The landlord stated that he believed the tenant concurred with the replacement being done before the next winter.

The landlord submitted additional evidence to illustrate that he was a conscientious landlord who attended to repairs promptly, including, for example, repair to the sump pump, replacement of the hot water tank rather than simply heating elements, and repair of the toilet, among others, frequently permitting the tenant to deduct costs from rent.

The tenant stated that the last straw for her was when she called in a gas company inspector in August 2011. The gas inspector left a tag stating, "Caution: Action Required, and noting that the furnace" has a pole out ...must be replaced or serviced." At the insistence of the tenant, the gas company representative turned off the gas and the tenant stated that she was then left to rely on the electrical baseboard heaters which she found to be more expensive to operate.

The landlord stated that he had sent a furnace installer to confirm the state of the furnace and measure it for replacement in August or September of 2011. However, the tenant refused to admit him because she had not received 24 hour notice.

On a second call, the installer was admitted but stated that the resident male seemed agitated and made disparaging remarks about the landlord. The installer advised the landlord he would prefer not to work on the rental unit until after the tenants had moved.

The landlord stated that he had been surprised by the tenants notice because in August 2011, she had asked his permission to do some interior repainting and he had agreed to pay for the materials if she wished to do the work. The tenant stated she had no recollection of that conversation; however, I found the landlord to be the more measured and credible throughout the hearing, and I am more persuaded by his evidence on the question.

The landlord further offered that the tenant's exaggeration of matters is made clear by the fact that she recommended the rental unit to a close friend at the end of her tenancy. The tenant stated that she made the state of the furnace clear to the friend when she made the recommendation.

On reconsidering the whole question of loss of quiet enjoyment, I find that having no participation by the landlord, I over favoured the tenant in my original decision.

I find no clear and unambiguous written declaration from the tenant to the landlord that she found the furnace problem so overwhelming that she would be forced to vacate the tenancy if it were not attended to promptly. Nevertheless, the tenant took the liberty granted by section 45(3) of the *Act* to leave the tenancy with short notice and the landlord acquiesced.

Furthermore, while she may have been entitled to do so, I am at a loss to understand why the tenant would have turned away the furnace installer in September of 2011 for want of 24-hour notice when she had been so anxious to have problem attended to.

Given the tenant's initial error in her own favour with respect to the amount of the security and pet damage deposits, and her failure to recall the conversation in August with respect to the painting of the rental unit, I am not fully confident in the veracity of her oral evidence.

Nevertheless, I find that the question of furnace safety was of sufficient consequence that the landlord ought to have taken firmer control of its inspection and repair at an earlier time.

Therefore, I allow the tenant $400 for the loss of quiet enjoyment arising from the concerns about the reliability and safety of the furnace.

Moving expenses - $113.85. I note that during the original hearing, I permitted an increase to $338.85 on this claim to account for labour.

However, on hearing evidence from both sides, I now find that, at the time the tenant vacated the rental unit, there was no imminent danger as the gas supply had been turned off and there were very clear signs that the landlord was making ready to replace the furnace, albeit late in summer, as he had stated he would do. In addition, I take into account the fact that the landlord accepted late notice.

Therefore, I find that the tenant moved at a time of her own choosing and is not entitled to moving expenses. This claim is dismissed.

Thus, I find that the tenant is entitled to a total award of $400. My original decision and order are hereby rescinded and of no force or effect.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **$400.00,** enforceable through the Provincial Court of British Columbia, for service on the landlord.

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 11, 2012.

Residential Tenancy Branch