Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, an Order that the landlord make repairs, to reduce rent for repairs, facilities or services agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant applied for dispute resolution on August 30, 2012. The female landlord was served a copy of the Notice of Hearing package on September 12, 2012; it was left in her mail slot. This package did not include any attachments.

The male landlord was served a copy of the Notice of Hearing package, again left in the mail slot, on September 12, 2012. That package did not include the first page of the tenant's application. It did include the tenant's documents entitled "details of items claimed." That detailed calculation was not provided as part of the hearing package given to the female landlord. However, both landlords' had viewed the claim calculation.

The tenant was confused in relation to dates of service, but agreed with the landlord's submission on the dates and method of service used. It took approximately 20 minutes at the start of the hearing to establish when and what and had been served to each of the landlord's. In the absence of clarity in relation to service of the balance of the tenant's evidence, which both landlord's said they did not receive, that evidence was set aside. The tenant was at liberty to supply oral testimony in relation to those documents.

The tenant confirmed receipt of the landlord's evidence package, received via registered mail within the required time-frame.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $11,090.00 as compensation for damage or loss?

Must the landlord be Ordered to complete repairs to the rental unit?

Is the tenant entitled to reduce the rent owed?

Is the tenant entitled to filing fee costs?

Background and Evidence

This tenancy commenced in 1999; the home is approximately 60 years old and sits on a waterfront property. A copy of the tenancy agreement was supplied as evidence.

The tenant has made the following claim:

Oil and heaters	6,400.00
Labour for painting	1,000.00
Plumbing parts	100.00
Foam for kitchen floor	40.00
Eaves trough	200.00
TOTAL	11,040.00

The tenant has claimed compensation for work her late husband completed on the rental unit and compensation for loss, some of which dates back ten years.

The tenant said that the oil tank was just replaced, but she is claiming the cost of excess heating costs incurred over the years as they had to use separate heaters, which cost additional money to operate.

The tenant claimed costs to repair a deck her husband built; the landlord said they had not given permission for this deck to be built.

Wind storms cause materials in the attic to blow around; the tenant would like an asbestos assessment completed.

The tenant claimed compensation for pruning that has been completed on the property. The landlord pointed to a “welcome letter” dated August 12, 1999, that was given to the tenant at the start of the tenancy. This letter indicated that the tenants were responsible for maintenance and care of the property.

The parties agreed that the tenants had completed some painting over the years; the tenant would paint and the landlord purchased the paint. The tenant could not say when they last painted the home but did not dispute the landlord’s submission that the landlord last supplied pain to the tenants in 2010.

The tenant spent money on a new shower head which the landlord did not replace.

The tenant said that the kitchen flooring is curling and that it needs to be repaired. She has placed some sort of foam on the floor.

The tenant did not provide any testimony in relation to the eaves troughs; her written claim indicated that she cannot clean the eaves herself.

The tenant also set out a list of complaints; she would like to be able to use the fireplace, although agreed that it has not been of use since 1999.

A large window in the living room, looking out to the ocean, has a broken seal and fogs; one large window was replaced and the tenant would like this second window replaced.

The tenant testified that she does have a smoke alarm, provided by the landlord. She would like the landlord to provide a fire extinguisher.

The written claim indicated that there was an issue in relation to access to the water meter. The tenant said the landlord wants her to keep a path cut for access by the municipal employee.

The tenant referenced an issue that occurred at the start of the tenancy; that bleach had to be poured on the foundation causing the tenants to use a hotel. The tenant did not submit a claim for that cost.

The tenant’s spouse had spent time trying to fix a plumbing problem and had to purchase parts. The landlord confirmed that in 2009 a leak had occurred around the bathtub and that the male tenant had attempted to repair it himself. When the tenant was unsuccessful the landlord hired a plumber to complete the repair.

The tenant testified that the carpets in the home were there at the start of the tenancy in 1999. She would like them replaced.

The tenant wants the oil furnace serviced. The landlord is willing to do this but the tank needs oil.

The landlord supplied copies of 2 letters sent by the tenant; one July 11 and the 2nd dated July 25, 2012. Both request assistance with repairs to the home.

The landlord supplied a copy of a mutual agreement to end the tenancy, which the tenant did not sign. The landlord mentioned that at some point the residence could be sold and the property developed.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the tenant's monetary claim, no receipts or invoices were supplied which could verify the amounts claimed by the tenant. On this basis alone I find that the monetary claim is dismissed.

I also considered Section 7 of the Act, which provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement* ***must do whatever is reasonable to minimize the damage or loss.***
>
> (Emphasis added)

The tenant has claimed compensation for items which date back up to ten years. There was no evidence before me that the tenant minimized the loss she has now claimed.

The tenant mentioned several items which had not specifically been requested in her written submission. In relation to carpeting, Residential Tenancy Branch policy suggests that the use lifespan of carpets is ten years. If the carpets were in the unit at the start of the tenancy in 1999 there is no doubt that they are beyond their useful lifespan.

The kitchen floors are lifting and require inspection by the landlord. Policy suggests linoleum floors have a useful lifespan of ten to twenty years, depending upon the

material. There was no evidence before me that the flooring had been replaced or maintained since the start of the tenancy in 1999.

In relation to the window that has a broken seal, the landlord confirmed that the window does allow moisture to build. Policy suggests a lifespan of twenty years for aluminum framed windows. There was no evidence that the window was not original to the house.

Section 32 of the Act provides, in part:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(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.*

Although the carpeting was not set out in the tenant's written submission, section 62(3) of the Act provides:

> *(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies*

On the basis of section 32 of the Act and, based on policy, which I find takes a reasonable stance, I Order the landlord to complete the following:

- Replace the carpeting in the home with a new suitable flooring option, removing all carpet that was in the home at the start of the tenancy; the age of the carpets place them well outside of the lifespan suggested;
- Have a glazier attend at the home to assess the window that appears to have a broken seal and, if it is determined by the glazier that the window is broken, that the landlord replace the window;
- That the landlord should ensure that the oil furnace is operational

These items should be completed no later than November 1, 2012.

Policy suggests that a landlord would normally be responsible for pruning and that a tenant is responsible for lawn and garden tending. Therefore, as the pruning is in dispute the tenant is at liberty to leave the pruning to the landlord. The letter given to the tenant's in August 1999 did not form a part of the tenancy agreement and was vague in relation to specific duties that the tenants would perform. Therefore, I find that policy should guide the parties in the matter of pruning. The landlord may ensure that the meter reader can access the meter.

In relation to the eaves; this is a maintenance matter that is not the responsibility of a tenant. As with ensuring the roof does not leak, it is expected a landlord will ensure that the eaves are functional, in order to avoid moisture problems which would impact a tenant.

From the evidence before me the home was painted by the tenants in 2010. In future the landlord should be guided by policy which suggests a unit should be painted once every 4 years.

In relation to the balance of the complaints raised by the tenant, I find there is no need to issue any further Orders to the landlord. The fireplace did not function at the start of the tenancy, the tenants built the deck of their own volition and there was no evidence that would suggest the landlord must assess the property for asbestos.

As the application has some merit I find that the tenant is entitled to filing fee costs in the sum of $50.00. The claim for compensation that brought the fee to $100.00 has been reduced as that portion of the application has been dismissed.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each party. The parties may also wish to reference the Residential Tenancy Branch website at: http://www.rto.gov.bc.ca/default.aspx, which includes Residential Tenancy Branch policy guideline #1; Landlord & Tenant – Responsibility for Residential Premises.

Conclusion

The claim for compensation is dismissed.

The landlord has been Ordered to make repairs, as set out in the analysis section of this decision.

The tenant may deduct the $50.00 filing fee from the next month's rent due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 05, 2012.