Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, OLC, ERP, RP, PSF, FF

Introduction

This hearing was convened in response to joint applications filed by the landlord and the tenants.

The landlord's application, filed January 30, 2013, seeks:

1. A monetary Order for unpaid rent and for compensation for damage and/or loss;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

The landlord seeks $3,950.00 which sum includes the filing fee.

The tenants' application, filed February 18, 2013, seeks:

1. To cancel a Notice to End Tenancy given for unpaid rent;
2. An Order compelling the landlord to make repairs;
3. An Order compelling the landlord to make emergency repairs;
4. An Order compelling the landlord to comply with the Act;
5. An Order compelling the landlord to provide services or facilities required by law;
6. An Order to recover the security deposit; and
7. Recovery of the filing fee paid for this application.

The tenant's seek $668.00 which sum does not include the filing fee.

Both parties appeared at the hearing and gave evidence under oath. Neither party requested an adjournment or summons to testify.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

The tenant submitted that they did not intend to make an Application seeking to cancel a Notice to End Tenancy given for unpaid rent and that they have already vacated the rental unit.

The parties agree that this tenancy began on October 1, 2010 and ended on January 27, 2013. The tenancy began as a 12 month fixed term reverting to a month-to-month tenancy in October 2011. Rent throughout the tenancy was $1,300.00 per month and the tenants paid a $650.00 security deposit on September 28, 2010.

A move-in inspection report was prepared. The parties agree that there was a move-out inspection but a report was not prepared. The landlord says this is because the rental unit had suffered damage as a result of a flood in a neighbouring suite and all the damages had not been completely repaired when the tenants vacated making it difficult to perform a proper move-out inspection. The tenants submitted that they tape recorded the move out without the landlord's permission and that they have supplied a transcript of the tape recording in evidence.

The landlord says the tenants put a stop payment on their rent cheque for January 2013. On January 28, 2013 the landlords received a letter from the tenants dated January 25, 2013 in which the tenants gave written notice of their intention to vacate. They also provided their forwarding address. A copy of this letter was submitted in evidence.

The landlord says the tenants vacated the rental unit on January 27, 2013 and not only did they put a stop payment on January's rent cheque, they did not pay rent for February despite the short notice. The landlord therefore seeks rent for January and February 2013 of $2,600.00.

The landlord testified that the tenants were concerned that there was a mold problem in the rental unit. Due to their concern the landlord paid the tenants $650.00 in compensation to allow them to find alternate accommodation for a few days while the mold was investigated. The landlord testified that the resulting report confirmed that there was no mold in the unit and the landlord seeks to recover the $650.00 paid to the tenants in this regard.

The landlord says that the tenants were issued a visitor parking pass which was never returned. The landlord testified that they were charged $50.00 by the strata corporation to replace the pass and the landlord seeks recovery of this sum from the tenants.

The landlord says that a window in the rental unit is cracked. The landlord states that the window was not cracked at move-in and there is no mention of it being cracked on the move-in report. The landlord estimates that it will cost $600.00 to replace the window.

The tenants agree that they put a stop payment on their January rent cheque and did not pay rent for February. The tenants also agree that they supplied their forwarding address and notice to vacate in a letter dated January 25, 2013 and they confirm that they did vacate on January 27, 2013.

The tenants say that they vacated the rental unit due to a breach of the agreement.

The tenants say the landlord failed to repair the property during the tenancy. The tenants say they advised the landlord via email of leaky and moldy windows, the cracked window and that there was a problem with the gas fireplace and the garbage disposal but the landlord failed to repair these items.

Further, the tenants say the landlord failed to provide suitable living conditions following a flood on December 7, 2012. The tenants submit that a restoration company attended and began making repairs the day of the flood. The tenants submit that their heat was disconnected after the flood, the drywall was removed from the bathroom and living room, the sink and vanity were removed and black mold was found behind the drywall. In making repairs the restoration company installed 2 large dehumidifiers and 3 fans that ran 24 hours a day from December 7 to December 19, 2012.

The tenants say that in the circumstances the rental unit was uninhabitable so they placed a stop payment on January's rent cheque and gave notice to vacate immediately in order to protect their health. They did not pay February's rent because they did not occupy the rental unit in February.

With respect to the landlord's claim regarding the visitor parking pass, the tenants submit that they returned the keys and FOB to the landlord and that they were never supplied with a visitor parking pass.

The tenants are seeking recovery of their security deposit in the sum of $650.00. Further, the tenants say that as a result of the restoration company having two

dehumidifiers and 3 fans in the apartment post-flood, their hydro costs increased. The tenants say the restoration company calculated that they incurred extra hydro costs of $58.08 however the landlord only reimbursed them $40.00 so they are also seeking a further $18.00 for a total claim of $668.00 plus the filing fee.

In response to the tenant's statements the landlord testified that if there were maintenance issues during the tenancy they were not advised of them.

With respect to the loss of the use of the bathroom, the landlord responded that during the restoration the toilet was removed for a single day. The landlord says there was some mystery as to who gave the authorization to remove the vanity as this was not necessary. With respect to heat the landlord responded that they asked the tenants if they needed a portable heater and the tenants initially declined. The landlord submitted that the rental unit is a 550 square foot apartment easily heated by the heat vents in the bedroom which were still operational. Still, the landlord says when the tenants did request a heater one was supplied to them.

Analysis

As this tenancy has ended the tenant's claims for Orders for the landlord to comply, to make repairs and to provide services and facilities are dismissed as not required.

Based on the testimony of the parties, a flood took place in a neighbouring rental unit on December 7, 2012 and a restoration company attended the same day to begin repairs. The evidence of the landlord is that the tenants were left without a toilet for one day and while they did not initially ask for a heater one was supplied to them when they did ask. Further, that when the tenants expressed concern about mold, they were provided with $650.00 to find alternate accommodation while the mold was investigated.

Floods and other calamities happen in homes. However, there has been insufficient evidence to show that the action or inaction of the landlords caused the flood. Based on the evidence that was submitted I am satisfied that the landlords acted quickly and decisively in getting the repairs done. Certainly this event caused some inconvenience to the tenants but the evidence shows that they received $650.00 from the landlords in compensation. While this was apparently paid as a result of a concern respecting mold, I find that $650.00 is a suitable sum of compensation for the inconvenience the tenants experienced during the restoration and for the additional hydro costs they now claim. I will therefore allow the tenants to retain this sum and dismiss the landlord's claim to recover this sum.

The parties agree that the tenants put a stop-payment on January's rent cheque and that they vacated the rental unit on January 27 having tendered notice on or about January 25. The tenants say they ended the tenancy due to a breach.

With respect to ending a tenancy the Act says:

> (1) A tenancy ends only if one or more of the following applies:
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> (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
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> (i) section 45 *[tenant's notice]*;
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> (ii) section 46 *[landlord's notice: non-payment of rent]*;
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> (iii) section 47 *[landlord's notice: cause]*;
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> (iv) section 48 *[landlord's notice: end of employment]*;
>
> (v) section 49 *[landlord's notice: landlord's use of property]*;
>
> (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;

With respect to the payment of rent, the Act says:

> **26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

With respect to Notice to end a tenancy, the Act says:

> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
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> (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

If there were problems with repairs, services or facilities the tenants option was to give written notice of the issues and file an Application for Dispute Resolution seeking to resolve the matters. However, the Act clearly does not allow tenants to withhold their rent. I therefore find that the tenants are responsible for payment of rent for January 2013.

With respect to a breach of a material term of the tenancy agreement alleged by the tenants, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during an arbitration hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the party relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms is a material term, does not make it so.

Overall I find that the tenants have failed to bring sufficient evidence to show that a breach of a material term occurred such that they had the right to end this tenancy.

Therefore, if the tenants wished to end their tenancy they were required to provide 30 days written notice delivered the day before their rental payment is due. In a tenancy such as this were the rent was due on the first, if the tenants wished to vacate by the end of January they would have had to give their notice on or before December 31, 2012. As they did not give notice as required by the Act, in lieu of that notice, I find that the tenants are responsible for February's rent in addition to January's rent.

I find that the landlords have failed to supply sufficient evidence with respect to the cracked window or the visitors parking pass and I dismiss these claims.

As both parties have paid filing fees to pursue their claims, I will not award recovery of those fees to either party.

Calculation of Monetary Award in favour of Landlords

January rent	$1,300.00
February rent	1,300.00
Less Security Deposit	-650.00
Less Security Deposit Interest (if any)	0.00
Balance due and owing	$1,950.00

Conclusion

The landlords are provided with an Order in the above terms. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia. The landlords must serve a copy of this Order on the tenants forthwith.

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 15, 2013

Residential Tenancy Branch