Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, OLC, RP, PSF, LRE, LAT, RR, FF

Introduction

This hearing resulted from the landlord's Application for Review Consideration granting a new hearing to deal with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and orders to have the landlord make repairs; provide service services and facilities required by law; suspend or set conditions on the landlord's right to enter the rental unit; as well as orders to authourize the tenant to change locks on the rental unit; and to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted over two days via teleconference and was attended by the tenant and the landlord. The hearing was originally convened on January 14, 2014 and adjourned for reasons noted below to March 6, 2014.

At the hearing of January 14, 2014 the tenant submitted that she had only received the notice of hearing documents the day before the hearing. As the Review Consideration Decision did not specify that the landlord was required to serve the tenant with the hearing documents within 3 days of receipt of the Decision I adjourned the hearing to allow the tenant time to prepare for the hearing.

In addition, as one of the reasons the Review Consideration Decision granted a new hearing was because the landlord had submitted he never received notice of the hearing or the tenant's evidence I made the following orders to be completed prior to the March 6, 2014 hearing:

1. The tenant was ordered to re-serve the landlord with all of her evidence within 48 hours of the January 14, 2014 hearing;
2. The landlord was ordered to serve the evidence he had submitted for the Review Consideration within 48 hours of the January 14, 2014 hearing;

3. I ordered both parties that if they had not received the notice of hearing documents for the March 6, 2014 hearing within 2 weeks of the January 14, 2014 hearing they were to contact the Residential Tenancy Branch to obtain the new hearing information;
4. I ordered both parties that if they were not able to reach the conference call on March 6, 2014 due to phone or technical difficulties that they should contact the Residential Tenancy Branch immediately.

I confirmed at the start of the hearing of March 6, 2014 that the landlord had received all of the tenant's evidence. The landlord also testified that he did not serve the tenant with any of his evidence from his Review Consideration Application. As such, I informed the parties that I would only rely on the existing evidence that had been on file for the original hearings from 2013.

The landlord submitted that that original evidence consisted of three pages that included a photograph of a jar of cigarette butts; a copy of an addendum to the tenancy agreement; and emails. I advised the landlord that the evidence I had did not include any emails. The tenant also confirmed that she did not have any emails. The landlord agreed to proceed.

At the outset of the hearing I advised both parties that as this hearing was the result of a Review Consideration Decision on the original hearings of August 27, 2013 and October 17, 2013 and the Decision issued on October 18, 2013 I would not be considering any new evidence (other than any the landlord had submitted in his Application for Review Consideration which as noted above he did not serve on the tenant) or take into consideration any actions or events by either party that occurred after October 18, 2013.

In particular, I advised the tenant that I would not consider the evidence she had submitted that she had provided the landlord with her forwarding address on October 21, 2013. I noted that she remained at liberty file a separate and new Application for Dispute Resolution to deal with that issue, if I were to uphold the portion of the decision dated October 18, 2013 that dismissed the tenant's claim to return the deposit.

Also at the outset of the hearing I confirmed with the tenant that she still no longer required a decision on the issues of the 1 Month Notice to End Tenancy for Cause; having the landlord comply with the Residential Tenancy Act (Act), regulation or tenancy agreement; having the landlord make repairs; provide services or facilities required by law; suspend or set conditions on the landlord's right to access the rental unit; authourized the tenant to change locks on the rental unit; or allow the tenant to reduce rent for repairs; services or facilities agreed upon but not provided.

Issue(s) to be Decided

The issue to be decided is whether the decision and order provided on October 18, 2013 should be confirmed; set aside or varied.

To accomplish this the specific issues to be decided are whether the tenant is entitled to a monetary order moving expenses; for all or part of the security deposit; for compensation for loss of quiet enjoyment and for the landlord's failure to make repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy began on March 1, 2012 as a 1 year fixed term tenancy that converted to a month to month tenancy on March 1, 2013. The tenant had previously confirmed the monthly rent was $1,000.00 with a security deposit of $500.00. The tenancy ended when the tenant vacated the rental unit on August 31, 2013 after receiving the landlord's 1 Month Notice to End Tenancy for Cause.

Both parties provided significant testimony in regard to 1 Month Notice to End Tenancy for Cause. The landlord submitted the tenant was repeatedly late paying rent and utility charges. He also submits that the tenant's reactions to events of August 2013 and her attempts to change the locks on the rental unit were an illegal activity that has or was likely to cause damage to the landlord's property; adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord.

The landlord did not specifically address the issue of the tenant or a person permitted on the property by the tenant having significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

While no testimony was provided on the issue of the security deposit the tenant did provide documentary evidence to confirm that she provided the landlord with her forwarding address in writing on October 21, 2013.

In regard to the events of August 2, 2013 the tenant submits that she had not agreed to allow the landlord to provide a film crew with access to her rental unit. The parties

agree the landlord had provided the tenant with an email on August 1, 2013 stating that there would be a film crew on site and that the only impact to the tenant would be in relation to her parking (provided as evidence).

The parties agree the landlord called the tenant at her place of employment on the morning of August 2, 2013 to seek the tenant's permission to allow access to her rental unit for the film crew. The tenant testified that she attempted to call the landlord back as soon as possible and the line was busy so she sent him an email (provided as evidence). In her email she states, among other things, she absolutely did not give the landlord permission to allow anyone access to her rental unit.

The landlord submits that he later spoke to her on the phone, approximately ½ hour after he received her email and after offering her $250.00 for her agreement she agreed. The tenant submits that she never agreed at all. The parties agreed that the tenant returned to the rental unit a couple of hours later and after she raised the issue the crew vacated her rental unit within a ½ hour or so.

The tenant submits that she had reported to the landlord on several occasions that there was leaking from the toilet and that she had to continuously clean up water from the floor that would leave the bathroom and go down the hallway. She states she did not realize that the water was also entering into a closet and it was not until she moved that she realized that her shoes had been damaged due to mould.

The landlord submits that they had investigate the tenant's complaint and found there was no problem with the toilet and that there was no leaking or condensation problems. The tenant submitted some email correspondence into evidence including a response from the landlord dated August 1, 2013 that states, in part, "the condensation at the toilets occur in the summer all the time due to moisture forming due to cold water and hot weather, also this is the same for pipes as well and it is not a major issue, if there is no major leak." [Reproduced as written].

The landlord also submits that it is physically impossible for any water to travel the distance between the bathroom and the closet due to the distance between the two. The landlord also submits the tenant had not provided any evidence, such as photographs, to establish there was any damage to any shoes.

In regard to heating the tenant submitted that the heating system did not provide adequate heating in the rental unit and it was often cold in the rental unit. The tenant did acknowledge that he had some baseboard heaters and a fireplace that she could use to supplement the heat.

The parties also both provided testimony regarding whether or not the agreement on utilities was a fair agreement. The agreement originally stipulated that the tenant would pay 60% of the utilities and that was later reduced to 55%. The parties testified that this was the amount because the landlord had indicated there were only 2 people upstairs and 3 people downstairs so the unit with the most people should pay the larger portion.

The tenant submitted that this was unfair because the upstairs unit had two adults and her unit had herself and two children. She submitted that she and children were hardly ever at home and therefore they were not using a significant amount of the utilities.

The tenant has submitted a substantial amount of documentary evidence in regard to the ant problem including a video that shows hundreds of ants in the rental unit. The tenant submitted that this occurred on several occasions in the last summer of the tenancy and that the landlord had provided some poison to be used.

The landlord submitted that the only reason there are so many ants in the video is because the tenant had just put down some poison which will attract the ants. The landlord submits that even if there were ants it was because of the tenant's lack of cleanliness in the rental unit and because the tenant had garbage strewn around in the back yard.

The tenant submits that by looking at the photographs she has submitted into evidence in regard to the film crew there is no evidence that she kept her rental unit or the outside area in a manner that would attract ants. She states also that these pictures were taken on day that she did not know anyone would be in her rental unit and as such is an accurate reflection of the way she maintain the rental unit.

Analysis

In relation to the tenant's claim for moving expenses I note that the original decision denied this request because the tenant vacated the rental unit without concluding her Application to dispute the notice and as such had accepted the tenancy was to end in accordance with the Notice.

As such, regardless of the reasons provided in this hearing as to why the Notice was issued I find that neither party provided testimony or evidence that would change the original Arbitrator's decision. I confirm this portion of the October 18, 2013 decision.

Likewise, as the tenant had not provided the landlord with her forwarding address prior to the original hearing I find no evidence or testimony has been provided that would change the original Arbitrator's decision. I confirm this portion of the October 18, 2013 decision.

Regarding the tenant's claim for compensation for the events of August 2, 2014, I find the only additional evidence that may have some impact on the original decision was the landlord's testimony that he had a verbal agreement with the tenant that she agreed to allow the film crew into her rental unit.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the case before me, there is documented evidence confirming that the tenant had no intention of allowing the landlord to allow the film crew access. As such, as the tenant has testified that she never gave the landlord any verbal permission I find the landlord has not provided any evidence that would change the original decision. I confirm this portion of the October 18, 2013 decision.

Additionally, I find that despite testimony from both parties on the appropriateness of the breakdown of utility costs there is no reason to change the original decision. The original decision regarding heating was based on the ability to heat the rental unit and not on the proportion of utility costs that the tenant was responsible.

Further, even if the issue was around the proportion of utilities I find that a party that agrees to a certain amount for utilities at the start of the tenancy agreement must make that agreement when they are satisfied that it is a fair amount. A party cannot later then make a claim that it is an unfair amount; if they felt it was unfair they should have negotiated a lower rate before entering into the tenancy agreement or they could have not accepted a tenancy before it began. For the above reasons, I confirm this portion of the October 18, 2013 decision.

In regard to the tenant's claim for compensation due to ants, I am not persuaded by the landlord's testimony that the tenant had caused the infestation due to her cleaning habits. Upon review of the photographic evidence submitted by the tenant I find there is no evidence of any ant attractants within the unit or outside of the unit. As such, I find

the landlord has provided no evidence to establish that the original decision should change. I confirm this portion of the original decision.

Finally to the tenant's claim for compensation for compensation in the amount of $100.00 due to water damage to shoes and for cleaning up water from the toilet in the bathroom. I am persuaded by the landlord's argument that the tenant has provided no evidence to establish that there was any water problem or that any of her shoes were damaged.

While I recognize that the tenant had submitted a complaint to the landlord regarding water around the toilet I am satisfied that the landlord investigated the complaint. However, without any other evidence that can corroborate the tenant's claim that a leak or condensation continued; that water then travelled down the hallway and that she had any damage shoes I find the tenant has failed to meet the burden to prove a loss. As such, I find the tenant is not entitled to the $100.00 granted in the previous hearing.

Conclusion

Based on the above, I grant that the Decision dated October 18, 2013 be varied to reduce the amount awarded to the tenant to be $750.00. In addition, I set aside the Monetary Order dated October 18, 2013.

I grant the tenant a monetary order in the amount of **$750.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 07, 2014

Residential Tenancy Branch