Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting compensation for damage or loss under the Act, return of the security deposit and filing fee costs.

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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant applied on November 21, 2013 and prior to the end of that month served the landlord with the hearing package. The tenant said that on March 7, 2014 an evidence package was sent to each landlord via express mail. Neither landlord received the evidence package. The tenant did not supply evidence that the evidence had been sent to the landlord's via a method that required a signature upon receipt.

The tenant's evidence was given to the Residential Tenancy Branch (RTB) on March 11, 2014.

Section 3.4 of the Residential Tenancy Rules of Procedure requires service of evidence, to the extent possible, with the application. There was no evidence before me that the

tenant's evidence could not have been served with the application. The tenant said she believed that she only had to give the evidence 5 days prior to the hearing. Even if service to the landlord, initiated on March 7, 2014, had been proven, that evidence would be deemed served on March 12, 2014; only 4 days prior to the hearing.

When serving the RTB documents must be given at least 5 days prior to the hearing; those days do not include the day of service, weekends or the day of the hearing. Service to the RTB on March 11, 2014 was made only 3 days prior to the hearing.

Therefore, the tenant's evidence was set aside. The tenant was able to provide oral testimony and to read from her evidence documents.

The tenant confirmed receipt of the landlord's evidence package on March 10, 2014. That evidence was given to the RTB on March 6, 2014.

In relation to the tenant's application, consideration has been given to only the details of the claim indicated on the application. The landlord said they did not find the application provided details that allowed them to fully understand the compensation sought.

The tenant said she had intended to claim $5,000.00 that would include moving costs. The details of the dispute section of the application indicated that the $4,000.00 claim was made for a twelve month period of time for disturbance, inconvenience, bedroom upheaval, sleeping on the couch, no privacy and entry to the unit by a contractor, emotional stress and upheaval. Therefore, the application was considered as a loss of quiet enjoyment, not for any specific costs. It was explained that respondents must be provided a detailed calculation of a claim; the tenant's application did not supply any detailed calculation, other than a global claim for loss of quiet enjoyment.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $4,000.00 for the loss of quiet enjoyment?

Is the landlord entitled to compensation in the sum of $1,350.00 for unpaid October 2013 rent?

May the landlord retain the $675.00 security deposit or is the tenant entitled to return of the deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 1, 2012, rent was $1,350.00 per month, due on the 1st day of each month. A security deposit in the sum of $675.00 was paid on March 4, 2012.

The tenant rented a basement unit; the landlords reside in the upper portion of the home.

The parties agreed that at the end of September 2013 the tenant gave notice that she would vacate the unit on October 31, 2013. The tenant vacated mid-October. The tenant confirmed that she placed a stop-payment on the October rent cheque and that rent was not paid for that month.

There was no dispute that in April 2012 the tenant reported a problem with moisture and mold under her bed and that the landlord quickly responded, resulting in excavation of the foundation of the home, to remediate any possible water egress.

The landlord submitted that a recent thunderstorm could have allowed water to enter via the foundation wall, which then seeped under the floor. The wall adjacent to the unit was excavated, new drainpipes and clean-outs were installed. The entire drainage system around the exterior of the home was also cleaned. The contractors evaluated the inside of the suite and a 2 foot square section of flooring was removed from the bedroom; no moisture or mould was found under the flooring. A decision was then made to replace the floor and the parties reached an agreement for compensation to the tenant.

The tenant vacated the home for 9 days while the floors in the unit were replaced. The parties agreed that the tenant received compensation equivalent to rent reduction for each day she was away from the home during that time.

The tenant paid to move her belongings from the home; the $500.00 cost to the tenant was the sum of her tenant insurance deductible. The tenant said that she had not asked the landlord to pay her insurance deductible but as the relationship became strained and as a result of repairs that she believed were required throughout the tenancy, the tenant now wants to be compensated. The landlord stated that they had reached an agreement for compensation in 2012 and that they have considered that matter settled.

In 2012 the landlord also supplied the tenant with a new refridgerator; the tenant said it was replaced as it was leaking. The landlord said that the original fridge had not been leaking.

A number of emails were sent between the parties; copies were supplied by the landlord.

On November 1, 2012 the tenant reported that the new floors were beginning to buckle. Within several weeks the landlord had a contractor remove the baseboards so the ends of the wood flooring could be trimmed. During this time the tenant was away, but her belongings had to be covered; she returned on December 2, 2012.

On December 1, 2012 the landlord sent the tenant a message to explain the floor had been installed during a dry time earlier that year, followed by a period of high humidity, combined with a lack of adequate space around the border of the floor. Now that the edges had been cut the floor had room to expand and contract. The landlord offered to place a dehumidifier in the unit, which could be installed behind the washer dryer. The landlord suggested the problem in the unit was the result of humidity. The landlord suggested they wait a few months to see if the floors would settle.

On June 9, 2013 the landlord sent the tenant a message to let her know that some work was going to be completed on the home. The landlord asked if the dryer was operating properly, if was taking too long to dry. They could hear the dryer running for long periods of time.

On June 12 2013 the tenant reported that the dryer did not seem to be working properly. Other items that needed some investigation were also mentioned. The tenant reported that since the landlord was not heating the upper portion of the home the tenant had to put the heat on, in order to prevent dampness in the cooler months. The tenant said she should not have to put her heat on. The tenant reported the floor was worse, not better. The landlord responded that the tenant should keep some heat on until the weather improved.

At the end of July the landlord replaced the dryer ducts; which the tenant believes had caused humidity problems.

In early August 2013 the tenant told the landlord that there was water on her bedroom floor and mold under the bed and night table. The landlord showed the tenant, by blowing on the floor, that condensation could be created when a floor is cold and is met by heat. The tenant felt the landlord was suggesting the humidity was the result of her actions. The tenant said that there was then a series of visits to the unit by contractors and the landlord. By early September it was determined that the floors would need to be replaced again.

The tenant next communicated by email on August 29, 2013, to report that the dehumidifier would not work and that the floor was continuing to buckle. The tenant had also discovered mold “or a black something” coming up in the bedroom. The tenant asked that the flooring be replaced. The tenant indicated she would move her belongings out again and expressed frustration at the failure to have the floors repaired in a timely manner.

The landlord responded on the next day, August 30, telling the tenant the issue was one of humidity. The landlord said they would meet with the flooring person the next week to finalize steps that should be taken. The landlord said it was likely there was no need to move as it was only areas of flooring that would be replaced, not sub-flooring. The landlord submitted the floor had buckled in 4 specific areas.

On September 16, 2013 the landlord sent the tenant an email telling her a dehumidifier had been placed in the unit to keep the humidity below 50%. The tenant was away at this time and had given permission for entry by the landlord. The landlord informed the tenant that the floor repair would take 5 to 6 hours and could be completed on the next Friday. The landlord also suggested the tenant not grow plants in the unit, to keep the unit clutter free, that she use only plastic bins for storage and to use the exhaust fan when cooking or using appliances. The landlord said the tenant had fabric mats and clothes under the bed which they believe would have held moisture and contributed to a small amount of mold growth. The tenant replied, thanking the landlord for the update and indicating she would likely choose not to be present while the flooring was repaired.

The tenant stated that on September 20, 2013 the flooring repairperson was allowed to enter her unit without her permission; he entered the unit while the tenant was present as he had been given a key and the alarm code. The tenant found this disturbing.

Email communication from the tenant on September 20, 2013 indicated that the dehumidifier may have turned off during the night and that the tank was full. The landlord said they would check it in the morning. The tenant replied that there was no need; that the contractor had said the flooring work would create dust, so he should be cancelled. The tenant believed the work would result in a need for cleaning and that there was still a problem with mold in the bedroom. The landlord asked if the tenant was giving notice and she replied that she was and asked the landlord not to enter her suite, as no emergency existed.

The tenant said that she is entitled to compensation for the loss of comfort during the last twelve months of the tenancy. There were flooring issues, combined with mold and moisture which posed a serious health hazard resulting in her ending the tenancy. The tenant stated the unit was not habitable.

The tenant's witness did not testify. I accepted that the witness would confirm the tenant's testimony that mold and water had been present in the unit in 2012 and 2013.

The landlord said they did everything they could to address the tenant's concerns; they had the foundation excavated, replaced the floor, installed a dehumidifier and repaired the dryer vent. The landlord said that the tenant contributed to a humidity problem as she had water features outside the patio doors, that she had a lot of clutter in the home, plants and that she kept items under her bed that interfered with air flow.

The landlord stated the unit is currently occupied and that no moisture problems have been reported; a dehumidifier is not in use.

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.

Pursuant to section 44(f) of the Act, I find that the tenancy ended effective October 31, 2013; the date which complied with the notice given by the tenant.

The tenant has confirmed that she failed to pay October 2013 rent. In the absence of an Order allowing the tenant to withhold rent due, I find that the landlord is entitled to compensation in the sum of $1,350.00.

The details of the claim indicated on the application would cover the period of time from October 2012 to October 2013. When averaged over a twelve month period, the tenant has requested $333.34 compensation per month.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*

The were some problems with a buckling floor and moisture; however, I find, on the balance of probabilities, that the landlord did take adequate steps to address the tenant's concerns; evidenced by the immediate action in April 2012, to address any water egress and continuing efforts to address the problem once the tenant raised the issue in June 2013. Between December 2013 and June 2013 there had been no email contact in relation to any of the issues raised by the tenant. There was no evidence before me that the tenant ever told the landlord her home was uninhabitable.

There was no evidence before me that supported the tenant's submission the floors posed a health risk or a loss of quiet enjoyment. There was agreement that the initial flooring installation had flaws; if the tenant had felt the floors were causing a loss of quiet enjoyment of her unit the tenant had a responsibility to minimize the claim she has made by bringing that claim forward in a timelier manner.

Section 7 of the Act 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)

I find, on the balance of probabilities that the tenant failed to mitigate the claim she has made. The tenant became frustrated in late November 2012 and could have come forward requesting Orders if she believed repairs were required. This did not occur.

Further, in relation to the submission that the presence of moisture and mold should result in compensation there was no evidence before me that the problems that did occur were to the degree that they could fall within the realm of a loss of quiet enjoyment. The landlord agreed that a small amount of mold had appeared under the bed, but there was no evidence before me of any health risk posed, such as a lab report. There was no evidence supplied that supported the tenant's submission that the unit had been rendered uninhabitable; such as a health inspection report.

The tenant also confused her claim by failing to supply a detailed calculation of the monetary sum sought. The application indicated a claim for loss of quiet enjoyment; during the hearing the tenant referenced specific costs which she believed should be reimbursed. Specific costs have not been considered.

The landlord did not dispute the tenant's submission that the contractor had entered the unit without notice. This was a one-time occurrence that I find fails to entitle the tenant to compensation. The tenant had always been flexible with the right of entry and I accept that the landlord erred when the contractor was allowed to enter.

Therefore, I find that the tenant's claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord has has established a monetary claim, in the amount of $1,400.00, which is comprised of unpaid October 2013 rent $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of $675.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $725.00**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's claim is dismissed.

The landlord is entitled to compensation for unpaid rent and filing fee costs.

The landlord may retain the security deposit.

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 17, 2014

Residential Tenancy Branch