



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlords equal to a 25% rent reduction for nine months and to recover the filing fee.

Both parties appeared at the hearing. The Tenant was assisted by an advocate, E.R. who made submissions on her behalf. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord named on the Tenant's Application for Dispute Resolution, D.C., was but one of three named landlords on the residential tenancy agreement. Pursuant to section 64(3)(c) I amend the Tenant's Application for Dispute Resolution to accurately note the Landlords.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation in the form of a 25% rent reduction for loss of quiet enjoyment?

Background and Evidence

E.R. testified that the tenancy began on January 1, 1996. The original rent paid was \$1,250.00 and was increased at various times throughout the years such that at the time of the hearing the rent was payable in the amount of \$1,438.00.

On June 1, 2016 the parties attended arbitration before Arbitrator Maddia at which time a settlement was reached. At the hearing E.R. testified that the Tenant moved out of the rental unit on July 15, 2016 to permit the Landlord to complete the repairs. Pursuant to this agreement the Tenant was also not required to pay rent for July 2016

The rental unit is a rental unit in a larger converted mansion which has a total of nine units. The rental unit is approximately 1,200 square feet, has one bedroom and two bathrooms, one of which the Tenant considers an ensuite.

In 2013 the Tenant noticed that water was leaking into the rental unit. Attempts were made by the Landlords to repair the leaking but as of October 2015 the Tenant moved out of the bedroom into the living room.

The Landlords installed a dehumidifier in the rental unit and compensated the Tenant the sum of \$100.00 per month for increased electrical charges. The Tenant submits this should not be taken into account in relation to her request for a further rent reduction as this is the amount she would be charged for increased electrical charges.

The Advocate submitted that her request for a rent reduction is more than a simple percentage calculation, as the only bedroom is now not usable and she is being forced to sleep on her couch. This is complicated by the fact that she has a fractured spine and finds sleeping on the couch very uncomfortable.

The Tenant submits that the Landlord has failed to correct this problem in violation of the *Residential Tenancy Act* as they have let the property fall into a state of disrepair.

The Tenant claims a 25% reduction in rent paid from October 2015 to June 2016 derived as follows:

“ ...

Total area of unit: 1200 ft²

Total affected area: 272 ft²

Bedroom area: 240 ft²

Bathroom area: 32 ft²

Formula of percentage

$((\text{Affected area}) \times 100) / (\text{total area}) = \text{percentage of area affected}$

$((272) \times 100) / 1200 = 22.6$

Percentage of unit affected: 22.6%

However, due to the vitally important nature of the area affected (the master bedroom), and the fact that the tenant has slept on an inadequate and damaging sleeping surface for 9 months, the tenant believes that compensation equal to 25% of the rent is extremely reasonable.

Monthly rent: \$1437.00

25% of \$1438 = \$359.50 per month

$\$359.50 \times 9 \text{ months} = \3235.50 ”

The Tenant also testified. She stated that she has been in the rental unit for 20 years, loves it very much, tends the garden, and considers it home to her. She further testified that this has been an ongoing issue as the rental unit has leaked for 20 years. She stated that there have been various leaks, including leaking from the upper deck. She stated that she has not wanted to cause trouble and simply put up with the previous leaks as well as the repairs without asking for compensation even though it was very disruptive.

She said this current leak is more problematic as it is her bedroom. She stated that the water leaks down the pillars and into the hallway and into the bathroom. She stated that she simply could not put up with this as it is her only bedroom. She was told that the repairs were to be done previously, and was very much looking forward to this repair. She was very upset that she received a two month notice due to this and feels that the Landlords' behaviour of late has been "terrible".

The Tenant stated that she was not aware when she will be able to move back into the rental unit as she was informed it would be between eight (8) days and two (2) months.

The Landlord D.C. testified as follows. She stated that the house was built in 1930. She confirmed that there are nine (9) units in total in the rental building. She confirmed that the rental unit is over 1,200 square feet. D.C. stated that the rental unit was appraised and the subject bedroom was measured as being 20 feet by 10 feet such that it is 200 square feet. She further submitted that the rental unit is a one bedroom plus den. She also stated that the bathroom is not an ensuite, it is two separate bathrooms. She further stated that one bathroom is original and the other was installed after the tenant moved in.

D.C. testified that there is a bachelor unit within the building and that unit is rented out for \$900.00. She stated that this other renter only lived in the rental unit for 1 year.

D.C. further stated that they have only raised the rent three times in 20 years and that this is not an attempt to evict the Tenant. D.C. stated that they have repeatedly tried to fix this problem. They are now at the point that the repairs are going to damage the structure.

D.C. clarified that the rent is \$1,388.00 per month as the Tenant pays \$50.00 per month for parking.

In terms of the Tenant's request for a 25% rent reduction S.C. testified as follows. He stated that the bedroom occupies 16.6% of the available space and that at most she should be entitled to a 16.6% reduction, not 25%. S.C. also confirmed that the current rent is \$1,388.00 and using his calculation of 16.6% of the total the Landlord's submit should be deducted from the rent is amount is \$230.41 per month. He confirmed that as she is claiming for 9 months the total is \$2,073.67.

S.C. also stated that the free rent for the two weeks in July should be considered as well as the \$100.00 per month (for a total of \$600.00) for increased hydro. He submitted that these two figures should be deducted from her total compensation.

S.C. confirmed that they have tried to address this issue and that it has been an ongoing problem that they can't seem to resolve.

S.C. also stated that they have also paid for the hydro during the first two weeks of July; although he did not know the total at this time. (He was informed that should he wish to pursue compensation for this amount he will need to bring forward a separate application.) S.C. testified that the den is approximately

11.6 x 20 which is bigger than the master bedroom and could have been used by the Tenant for her bedroom.

In reply, the Tenant confirmed that the den has a fireplace and is used as a dining room and is not a bedroom.

The Tenant also confirmed that she did not pay rent for the first two weeks of July pursuant to the agreement reached at the June 1, 2016 Arbitration.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of leaking in the master room and master bathroom such that these two rooms were unusable. She seeks the equivalent of 25% rent reduction for nine (9) months.

The Landlords agree that some reduction is warranted, but argue it should be based on the relative square footage of the bedroom in relation to the rental unit as a whole as well as taking into consideration compensation already provided to the Tenant.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has proven her tenancy has been devalued by her inability to use her master bedroom and bathroom. I find that she has not been able to use her bedroom and the bathroom she considers an ensuite for approximately nine months.

I accept the Landlord's evidence that the rent is \$1,388.00 per month. I also find the Tenant's request for a 25% reduction to be reasonable based on the follows:

- The bedroom is 200 square feet of a 1,200 square foot rental unit.
- According to the Landlord, a bachelor unit in the same rental building rents for \$900.00.
- The Tenant has a second bathroom to use, although she considers he affected bathroom her ensuite.
- The "den" is not an option as another bedroom as it is used by the Tenant as a dining room.
- The Tenant has been sleeping on a couch in her living room which is made more difficult by her injured spine.

I accept the that the Tenant was not required to pay rent for two weeks in July 2016, however this was pursuant to the June 1, 2016 agreement and is not relevant to the claim before me as it relates to a time period beyond that which the Tenant seeks compensation. Accordingly, I make no adjustment for this amount.

I find the \$100.00 rent reduction for the dehumidifier to be separate from the current claim as I find it is related to the Tenant's increased hydro and therefore nets out to zero.

Based on the above, the evidence and testimony before me, and on a balance of probabilities, I find that the Tenant is entitled to a 25% rent reduction for the time period claimed and is therefore entitled to the sum of **\$3,123.00** calculated as follows:

(Current rent) \$1,388.00 x 25% (rent reduction) = \$347.00
\$347.00 x 9 months (October 2015 to June 2016) = \$3,123.00

The Tenant is granted a Monetary Order in this amount and must serve a copy of the Order on the Landlord. If necessary this Order may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant is entitled to a 25% rent reduction for the months October 2015 to June 2016 for a total of \$3,123.00 and is granted a Monetary Order for this amount.

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: July 22, 2016

Residential Tenancy Branch