Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNSD, OLC, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has applied to cancel a two month Notice to end tenancy for landlords' use of the property issued on August 22, 2016, return of the security deposit, compensation for damage or loss in the sum of $7,529.34, an order the landlord comply with the Act and to recover the filing fee from the tenant 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, 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 submitted the application on August 31, 2016.

On October 17, 2016 the tenant submitted an amendment to the application. The amendment includes a request to cancel a 10 day Notice to end tenancy for unpaid rent issued on October 4, 2016. Service of the amendment was not reviewed during the hearing as the parties reached a mutual agreement that the tenant would accept the two month Notice to end tenancy for landlords' use of the property. The tenant withdrew the amended application.

The parties confirmed that a two month Notice ending tenancy was issued on August 22, 2016 requiring the tenant to vacate effective October 31, 2016. The tenant has not paid October 2016 rent, as compensation equivalent to one months' rent which is required, based on the two month Notice ending tenancy. In this case a 10 day Notice ending tenancy for unpaid October 2016 rent would not be supported.

The parties agreed to meet at noon on October 31, 2016 to complete a move-out condition inspection report. The tenant will send the landlord an email to provide the name of an agent who will attend on behalf of the tenant.

The tenant set out a claim in the sum of $900.00 for the time and expenses involved in the dispute. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. “Costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the portion of the claim for the time spent is denied.

Issue(s) to be Decided

Must the tenant be reimbursed the equivalent of 25% of the hydro and gas costs paid throughout the tenancy in the sum of $5,428.80?

Must the tenant be reimbursed for the cost of furnace filters purchased in the sum of $859.54?

Should the tenant be reimbursed for repair made to doors damaged by the tenants’ pet?

Background and Evidence

The tenancy commenced on June 1, 2010. The residential property includes the tenants’ unit and a basement suite. There is a single hydro and gas meter.

A copy of the tenancy agreement was submitted as evidence. The landlord and her ex-spouse signed the tenancy agreement as landlord. In 2013 the respondent became the sole landlord. The tenancy agreement indicates that the tenant will pay hydro and gas costs, including utilities for the basement suite.

The tenant supplied copies of hydro and gas account payment histories. The hydro history listed costs from July 7, 2014 to June 26, 2016. The gas payment history listed payments made between July 14, 2014 and June 23, 2016. The tenant then extrapolated from those payment histories to establish the cost of utilities that would have been incurred by the basement suite tenants throughout the tenancy. The tenant submitted that the landlord should reimburse the tenant for 25% of the utilities the tenant has paid over the six year tenancy.

The tenant provided a breakdown of the hydro costs during the period set out in the payment histories; which averaged $173.25 per month. The landlords’ 25% share would be $43.31 per month over a six year period.

The tenant provided a breakdown of the gas costs during the period of the payment histories; which averaged $128.35 per month. The landlords’ 25% share would be $32.09 per month over a six year period.

The tenant provided a breakdown of the cost of furnace filters purchased each month during the tenancy. Over 32 months the tenant spent $26.87 for furnace filters each month. The landlord had told the tenant she must maintain the forced air furnace by replacing the filters. The tenant submitted a single receipt for a furnace filter purchased on July 29, 2016. The tenant stated that the furnace was serviced annually.

The tenant claimed the sum of $341.00 representing the cost of repairs made to wood doors damaged by her cat. The tenant referred to this damage as wear and tear. It was explained to the tenant that section 32 of the Act requires a tenant to repair any damage outside of normal wear and tear. It was explained that damage caused by a tenants' pet is not wear and tear, but caused by her pets, and that the claim for this repair would not succeed.

The landlord confirmed that the tenant had paid the utility costs for both units throughout the tenancy. The landlord said that there were periods of time when the basement suite was not occupied. The tenant controls the heat as the thermostat is the in the tenants' unit. The landlord confirmed that when the furnace was on, the lower unit would be heated; whether someone was occupying that unit or not.

The landlord said that the share of the lower unit should be 15% not 25% of the utility costs. The landlord stated that the basement unit was not occupied for a total of 12 months over the past three years. The lower unit did not have a washer or dryer; which would keep costs down.

The landlord said she did not direct the tenant to replace the furnace filters on a monthly basis; that would have been ridiculous. The landlord said she looked at the cost of filters and found they could be purchased for as little as $7.99. The landlord submitted that the tenant had been asked to replace the filter only if it looked clogged. The landlord wants to see every receipt before the tenant is reimbursed. The landlord had the furnace serviced every year to be sure it was functioning. The landlord said that filters would not need to be replaced during the summer when the furnace was not running.

During the hearing the tenant said she would reduce the sum claimed for filters to $15.00 each.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

The term of the tenancy agreement signed by the parties setting out utility payment requires the tenant to pay the costs incurred by any tenant who occupies the basement suite.

Section 6 of the Act provides:

> ***Enforcing rights and obligations of landlords and tenants***
>
> ***6*** *(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*
> *(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
> *(3) A term of a tenancy agreement is not enforceable if*
> *(a) the term is inconsistent with this Act or the regulations,*
> ***(b) the term is unconscionable****, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*
>
> (Emphasis added)

RTB policy suggests that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

Section 3 of the Regulation defines unconscionable as:

> ***3*** *For the purposes of section 6 (3) (b) of the Act [unenforceable term], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.*

I find that the policy is reasonable, that a tenant cannot be expected to pay utility costs for an occupant of another suite in the building. Each unit should have a separate meter or the tenants should agree to a percentage of costs payable at the start of the tenancy. The notation on the tenancy agreement signed by the parties did not set out a percentage to be paid by the tenant. Therefore, I find that the term requiring the tenant to pay all utility costs was grossly unfair and, as a result, that the term is unconscionable. As the term is unconscionable, I find pursuant to section 6 of the Act that the term requiring payment of utilities is unenforceable.

The tenant has not suggested that she not pay her fair share of utility costs and I find that the offer of payment of 75 % of the costs is reasonable. Therefore, pursuant to section 62(3) of the Act I find that the landlord is responsible for 25% of the cost of utilities over the period of the tenancy.

I have considered the evidence supplied by the tenant to support the sums claimed and the extrapolation of those costs back to June 2010.

Based on the fact that the tenant paid all of the hydro and gas utility costs throughout the tenancy I find that the tenant has established a claim for costs related to utilities

used in the basement suite. This was not disputed by the landlord. The tenant has paid utility costs that were not incurred by the tenant.

The tenant did not dispute the landlords' submission that in recent history the basement suite had been vacant for 12 months; therefore, I have considered that vacancy as having affected the use of utilities. There was no ability of the landlord to turn the heat down in the basement suite, as the only thermostat in is the tenants' unit. There was no evidence before me that the landlord made any effort to close heat vents, in an attempt to minimize heating of the basement suite. Therefore, I find that the use of heat was not changed due to the vacancy.

I have accepted the tenants' claim for the gas costs, based on the calculations provided; less $385.08 representing 12 months of what would have been reduced usage during the time the basement suite was vacant. Therefore, the tenant is entitled to compensation in the sum of $1925.40 for gas costs to June 2016, inclusive. The balance of the claim for gas is dismissed. This reduced sum represents the reduction in utility costs when the basement suite was vacant.

I find that the calculation for hydro costs is reasonable and based on past usage. Therefore, I find that the tenant is entitled to the sum claimed; $3,118.32 for hydro costs, to June 2016 inclusive.

The tenant provided only one furnace filter receipt. While the tenant states that she was asked to replace the filters on a monthly basis I am not convinced, on the balance of probabilities that this occurred. The tenant provided no other evidence of monthly filter replacement. Further, the landlord questioned why the tenant would have been expected to change filters during the summer months when the furnace would not have been running; a reasonable question.

I do accept that the tenant purchased a filter at least on an annual basis, given the absence of evidence that the annual inspections revealed any problems with the filters. Therefore I find that the tenant is entitled to compensation for a single filter for each year of the tenancy in the sum of $17.00 each. I have reduced the sum for each filter to what I find is a reasonable amount between that suggested by the landlord and that paid by the tenant for a single filter. Therefore, the tenant is entitled to the sum of $102.00 for furnace filters; the balance of this claim is dismissed.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenant is entitled to recover the $100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of $5245.72**.** In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

The parties have agreed the tenancy will end in response to the two month Notice ending tenancy issued on August 22, 2016. The tenant stated that she accepted the two month Notice ending tenancy that was issued on August 22, 2016, with an effective date of October 31, 2016.

Conclusion

The tenant is entitled to compensation in the sum of $1,925.40 for gas, $3,118.32 for hydro and $102.00 for furnace filter costs.

The balance of the claim is dismissed; with the exception of the claim for the tenants' time, which is declined.

The tenancy will end effective 1:00 p.m. on October 31, 2016, in accordance with the two month Notice ending tenancy issued on August 22, 2016.

The tenant is entitled to filing fee costs.

The tenant withdrew the amended application in which the tenant disputed a 10 day Notice ending tenancy for rent owed in October 2016. The tenant and landlord have agreed the tenancy will end on the effective date of the two month Notice ending tenancy. Therefore, the tenant will be entitled to compensation equivalent to October 2016 rent owed.

This decision is final and binding 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 31, 2016

Residential Tenancy Branch