Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNR, MNDC, RP, LRE, LAT, RR, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant applied to cancel a Notice ending tenancy for landlords' use of the property, the cost of emergency repairs, compensation for purchase of a faucet, an order the landlord make repairs and that conditions be set on the landlord's right to enter the unit, authorization allowing the tenant to change the locks and to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord 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 landlord confirmed receipt of the original application and the amendment made on November 18, 2016. The tenant amended the application, deleting the request to cancel the two month Notice ending tenancy for landlords' use of the property that was issued on October 27, 2016. The tenant added a claim for compensation equivalent to two months' rent, pursuant to section 51 of the Act and the cost of a smoke detector. Photographs and evidence in support of the amendment, including a detailed calculation, were submitted.

As the tenancy has ended the tenant withdrew the claim made requesting repairs to the unit; conditions on entry to the unit; changing the locks and reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord confirmed receipt of the amendment and evidence; including coloured photographs and written submissions.

The landlord did not make a written submission.

Issue(s) to be Decided

Is the tenant entitled to compensation for replacement of a faucet and smoke detector in the sum of 88.61?

Is the tenant entitled to compensation in the sum of $1,655.16 pursuant to section 51 of the Act?

Is the tenant entitled to compensation in the sum of $4,965.48 for loss of quiet enjoyment?

Background and Evidence

The tenancy commenced in 2015. The parties agreed that the rental unit is a manufactured home on a rural property. Rent is due on the first day of the month. Rent was $800.00 at the start and effective November 1, 2016 was increased to $827.58.

The tenant brought forward evidence of a hearing held on October 27, 2016. The tenant had disputed a one month Notice ending tenancy for cause and made other claims (see cover for file number.) Only the Notice was considered at that hearing. On October 27, a decision was issued, cancelling the Notice. The landlord had said she wished to "decommission" the manufactured home as it was too old to repair. The arbitrator found that there was insufficient evidence to prove the tenancy should end for the reason of a government order.

On October 27, 2016, the date of the previous hearing, the landlord issued a two month Notice to end tenancy for landlords' use of the property. The Notice provided the reason:

> *The rental unit will be occupied by the landlord of the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse.)*

On November 1, 2016 the tenant disputed the Notice. On November 15, 2016 the tenant gave the landlord 10 days written notice to end the tenancy, pursuant to section 51(a) of the Act. The tenant supplied a copy of the notice which included a forwarding address and request for return of $800.00 rent, as compensation for the eviction. On November 18, 2016 the application was amended to remove dispute of the Notice.

The tenant has requested compensation based on section 51 of the Act, as the landlord does not plan to move a close family member into the home; as indicated on the Notice. The tenant said that the landlord is moving her sister into the home.

During the hearing the landlord confirmed that her sister will be moving into the rental unit and that there are no plans for any other family member to reside in the unit.

The tenant provided evidence of a text message sent on July 20, 2016 informing the landlord a shower faucet was not functioning. The landlord confirmed that a faucet malfunctioned and was replaced with a faucet purchased by the tenant. The landlord did not dispute the tenants' submission that the tenant installed a smoke detector after an August 5, 2016 electrical inspection determined that a detector was missing. The tenant has claimed the cost of the faucet and smoke detector.

The tenant has made a claim for loss of quiet enjoyment of the rental unit. The tenants' written submission sets out a claim based on the lack of proper hot water, electrical outlets, lights, locks, safety and blocked driveway in the time that she has lived on the property. The tenant submits she has been punished by the landlord through threats and actions for failing to accept the condition of the home. The tenant has claimed six months' rent for the limitation on the unit, harassment and the time and expense spent.

The tenant said there were a number of deficiencies with the unit that were presented to the landlord in a letter issued on August 4, 2016. A copy of the letter was supplied as evidence, which set out issued as follows:

- The tenant needed keys to the unit;
- An electrician is required to fix on-going concerns including an outlet that melts in the kitchen and living room, outlet outside of the trailer, outlets that are not working in the kitchen and living room, kitchen light flutters, hot water tank sparks and melts insulation;
- Lack of a lawn mower;
- The driveway is often blocked with the landlords' dump truck, trailer and other equipment;
- The back deck is a safety hazard and needs repair as it cannot be used;
- The landlord has suggested the tenant is hoarding items;
- An agreement the tenant would pay for any hydro costs over $50.00 per month but the tenant wishes to see bills;
- Smell in the unit caused by the landlord s' failure to repair while the tenant was away and had people looking after pets; and
- That the parties had agreed to leave the existing old carpets as they were ruined before the tenancy started.

The tenant asked that the repairs be made promptly and courteously. The tenant said that prior to issuing this letter a number of verbal requests for repair were made. The tenant could not provide any details of previous requests made.

Copies of two Electrical Certificates of Inspection issued by the British Columbia Safety Authority were submitted as evidence. The report issued on August 5, 2016 indicated

the unit failed inspection. A number of deficiencies were noted in the report, including a missing smoke alarm. The landlord was ordered to make repairs by September 5, 2016.

The tenant said the landlord lied to the Authority by telling them the tenant had vacated. As a result the landlord was issued a September 6, 2016 Certificate of Inspection that included a new compliance date of November 7, 2016.

The tenant supplied a copy of an October 18, 2016 estimate prepared by an electrician. The total cost to make repairs based on the Safety Authority report was $4,250.00.

The tenant said that at the start of the tenancy the driveway to her unit at the back of the property would be blocked. The relationship was amicable and they worked this out. The landlord began to become aggressive after he tenant started asking for repairs in 2015. The issue was still not too difficult. Once the tenant requested the plumbing repair the driveway was blocked more frequently, but then it ceased after the August 4, 2016 letter was issued. The tenant would ask the landlord to move vehicles so she could drive in and out of the property. It was only the tenant and her friends who were blocked from using the driveway.

On November 2, 2016 the tenant attempted to leave the property and could not, as a gate had been locked. The tenant said that when she exited her truck the landlord was present and shoved the tenant. The landlord then handed the tenant a letter and shoved her again. The landlords' son then came out of the bushes. The tenant called 911. The landlord then began to panic and started to unlock the gate. The police arrived and were told two different stories. The landlord told police she did not have a key and would cut the lock off; that someone else had locked the gate. It was at this point the tenant said she decided to end the tenancy.

The tenant supplied photographs taken of the landlord at the time the gate was locked. The landlord can be seen in the photos, at the gate, holding a key. The tenant provided photographs of vehicles parked in the drive way, which were blocking the tenants' ability to exit and enter the property.

The tenant had a witness present who would testify he listened to a phone message from the landlord that provided verbal notice to the tenant, to leave.

The tenant said that the issues related to the blocked driveway, an accusation of hoarding by the landlord, electrical problems and eviction notices all support the claim for loss of quiet enjoyment.

The landlord responded that the tenants' submissions were totally untrue. The driveway is a common driveway, shared by a number of people who live on the property. There is a wide area where vehicles can turn around. On occasion the landlords' dump truck and trailer would be in the way and it would be moved. When the tenant took photos the landlord was in the process of opening a gate.

The landlord said there had always been a padlock on the gate but it was never locked. The police asked the landlord to remove the lock, so the landlord did. The landlord said the tenant was never harassed, but the tenant got upset when she was asked to clean the unit.

The landlord said the Safety Authority contacted her and that the landlord asked for an extension. The tenant did not tell the landlord about the electrical problem and the landlord did not know the tenant needed a key to the home. The tenant never once told the landlord that she was blocked in the drive way. The access could be narrow, but vehicles could pass by. The landlord said she repaired things in a timely manner once the tenant informed her of the need.

The landlord had an electrician make repairs on November 5, 2016. The landlord said that she did not tell the Authority the tenant had vacated. The landlord stated the repairs were fully completed on November 5, 2016.

Analysis

Based on the landlords' acknowledgment that the broken faucet was replaced using a faucet purchased by the tenant I find that the tenant is entitled to costs claimed. The landlord would have had to purchase a faucet so has not suffered any loss. As the landlord did not dispute the tenants' purchase of a smoke detector I find the tenant is entitled reimbursement, as claimed; totaling $88.61.

The landlord has confirmed a two month Notice to end tenancy for landlords' use of the property was issued. The tenant originally disputed the Notice but then gave notice to end and vacated on November 30, 2016. The tenant accepted the reason given on the Notice, issued pursuant to section 49(3) of the act, which provides:

> *(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 49(1) of the Act defines close family member:

> *49 (1) In this section:*
>
> *"close family member" means, in relation to an individual,*
>
> *(a) the individual's parent, spouse or child, or*
> *(b) the parent or child of that individual's spouse…*

During the hearing the landlord reiterated that the landlord's sister will reside in the rental unit. As section 49(1) of the Act does not contemplate eviction so that a sister may take possession of a rental unit find that the landlord has issued the Notice for a reason not supported by the legislation.

Section 51(2) of the Act provides:

> *(2) In addition to the amount payable under subsection (1), if*
>
> > *(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
> >
> > *(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*
>
> *the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

The Notice was to be effective December 31, 2016; but I find pursuant to section 44(f) of the Act that the tenancy ended November 30, 2016 as the tenant exercised her right to give notice, pursuant to section 50(1) of the Act and vacated on that date. Within a reasonable period of time the landlord must accomplish the stated purpose given on the Notice; but in this case the purpose is not supported by the Act.

Therefore, I find that the landlord is unable to meet the requirement of section 51(2) of the Act and, as a result the tenant is entitled to compensation equivalent to double the monthly rent payable; $1,655.16.

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.*

Residential Tenancy Branch policy suggests a landlord is obligated to ensure that the tenants' entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. I find that this would not include matters involving repair that could entitle a tenant to a rent reduction, such as the electrical repair dispute.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

From the evidence before me I find that what appeared to be an amicable landlord-tenant relationship deteriorated over time. In relation to allegations that the driveway was blocked I found the photographs to be of little assistance in substantiating a claim. The tenant could not provide any dates the landlord purposely blocked the tenant from accessing the home or leaving. Further, it was not apparent that if the driveway was blocked, over what period of time that occurred. I can find no basis for a claim for loss of quiet enjoyment as a result of the driveway. Further, it is difficult to understand how the landlord would have been able to block only the tenant and her friends from using the drive; action I find would have involved considerable effort on the part of the landlord.

The single conflict that is alleged to have occurred with the locked gate was disputed by the landlord and I was not convinced that any harm had occurred. This temporary discomfort described by the tenant does not meet the standard that would support compensation. There was no evidence that any investigation of an assault occurred against the tenant.

In relation to repeated eviction notices, the landlord did issue one Notice for cause that was set aside. The second Notice was accepted by the tenant, although the reason given has entitled the tenant to compensation. From the evidence before me the landlord may well have been using any means to end the tenancy; but there was not what I would find to be an excessive number of attempts made that would reach the level supporting compensation to the tenant. In fact the tenant accepted the second Notice and vacated.

Where the landlord breaches a term of the tenancy agreement or Act the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is set out in section 7 of the Act. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The tenant could not provide any evidence of efforts made to inform the landlord of electrical deficiencies. Once the Safety Authority report was issued the landlord did complete repairs by November 5, 2016; within the time provided by the Safety Authority. I have considered this portion of the claim relative to a loss of quiet enjoyment. I find that the tenant has failed to prove any loss of quiet enjoyment as contemplated by section 28 of the Act.

Therefore, I find on the balance of probabilities that the tenant has failed to provide evidence adequate to support a claim for loss of quiet enjoyment. As a result I find that the claim for loss of quiet enjoyment 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, pursuant to section 67 of the Act, I grant the tenant a monetary order in the sum of or the balance of $1,843.77 (faucet and smoke detector $88.61 and $1,655.16 compensation and filing fee**.)** 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.

Conclusion

The tenant is entitled to compensation pursuant to section 51(2) of the Act.

The tenant is entitled to compensation pursuant to section 67 of the Act.

The balance of the claim is dismissed.

The tenant is entitled to filing fee costs.

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: December 21, 2016

Residential Tenancy Branch