Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC FF

Introduction

Both parties attended the hearing and agreed the tenant had served the landlord with the Application for Dispute Resolution. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) For a rent reduction and/or compensation for damage or loss under the Act, regulation or tenancy agreement; and
b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to compensation as claimed?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. This is the third rather lengthy hearing between these parties. I encouraged them to speak only to the relevant issues under this claim. English is the tenant's second language and he frequently had to clarify his points. Both parties invited me to consider previous decisions on their issues. It is undisputed that the tenancy commenced August 25, 2015, rent was $2150 a month and a security and pet damage deposit was paid. In a previous decision, the tenant received a monetary order for the refund of the deposits. The tenant vacated on April 30, 2016 pursuant to an Order of Possession granted for cause in a previous hearing.

The tenant claims as follows:

1. $700 for the poor environment for 10 days when the furnace was not working. He said he tried to switch it on Aug. 25, 2016 but it was not working properly until September 14, 2016. The landlord said they responded immediately to the many tenant complaints. They provided invoices to show a professional changed the filter and did a minor tune-up on August 30, 2016 and they said the management company had checked everything prior to renting the home and it was fine. In September, the tenant said he wanted a digital controller so the landlord installed a new furnace on September 11, 2016. They said it was difficult to do anything

faster as the tenant wanted times to suit his convenience. The tenant said the new furnace was because the old one was not working properly. He referred to the invoice where the pilot light and motor were checked.

2. $840 for reporting issues, waiting and watching (over 20 times) for service persons to fix electric problems, leaks, furnace, changing broken parts, door and washer broken. The landlord said that many complaints were about minor items such as setting a breaker that tripped, replacing lightbulbs, screws etc. They said there was always a professional management person or themselves present so there was no need for the tenant to be home to oversee the work.
3. $650 a month rent reduction ($1950) for three months for living with inadequate housing due to a bad smell and some unfinished issues, especially for Nov., Dec. 2015 and Jan. 2016. In the application, the tenant added an additional 3 months (Total 6x$650= $3900) rebate to his request as his request was dated in February 2016. The landlord provided photographs taken in December 2015 to illustrate that the tenant is using the whole house as his furniture and items of living are in every room, including the basement. The tenant said he left his furniture and items in the rooms but they could not use the basement properly. He said sometimes the smell was not there if the window was open. The landlord said no realtor could detect a smell problem. The tenant referred to an email he wrote himself referring to a management person, ‘C’, and said he had smelled some bad smell. The landlord said the home had been rented for 6 years prior to this tenancy and no one had complained of smells and ‘C’ never mentioned the smell. The landlord said the management company said there were so many complaints with this tenant that they should make an offer to him to move out and give him his costs. The tenant would not accept although the offer was repeated because of the extreme difficulty the realtor was having in scheduling showings and providing the kind of notice and service that the tenant demanded.
4. $480 + $300 for arranging showings, cleaning before and after showings. Cleaning calculated at $40 + $40 for visit. Weekend and evenings $20 extra. The tenant claims the showings were a serious infringement of their peaceful enjoyment. The landlord said no one asked the tenant to clean for showings, the realtor only requested they have the home reasonably tidy. They said the $300 claimed for an open house was for a one hour open house which was all the tenant permitted. The landlord claims they lost potential sales at the height of the market due to the uncooperation of the tenant. He said there was no negotiation or agreement for them to pay the tenant for showings as they made a valid offer to allow them to move and get moving costs. In the letter dated February 4, 2016, the tenant said they would not agree to any open house unless the landlord agreed with their monetary compensation proposals.

Many documents from both parties are in evidence. Invoices showing dates of furnace repair and installation of new furnace, registered mail receipts, statements of the parties, statements of the tenant regarding his claim and his photographs and many emails. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant who is claiming compensation to prove that the landlord violated the Act, regulations or tenancy agreement or through act or neglect caused the damages for which he claims compensation.

In respect to the first claim of the tenant, I find the landlord's evidence most credible that they attended diligently to the tenant's complaint about the furnace. Their credibility is supported by the invoice dated August 2015 for a service call for the furnace and the payment for a furnace replacement ($2520) on September 11, 2015. The landlord said the furnace was working fine as they had it on to check before the tenants moved in but they changed it because the tenant wanted a digital thermometer. I do not find it credible that the tenant 'was freezing' while they waited for the furnace replacement as it was early September and, as the landlord's evidence shows, the average temperature was around 16 degrees Celsius. I also find it unlikely that the furnace was not working at all (although maybe not as efficiently as the tenant would have liked) as a technician serviced it in late August. I dismiss the first claim of the tenant.

Regarding the second claim for $840 for being home and overseeing repairs, I find the landlord's evidence more credible that they always had themselves or the professional management company present to oversee repairs so the tenant was not required to do this. I find the weight of the evidence is that the landlord was not neglecting the property or failing to attend to handle the repairs. I dismiss this claim of the tenant as there is insufficient evidence to show that he was compelled to be present due to act or neglect of the landlord.

The third claim of the tenant is for a rent rebate of $650 a month for 6 months because of a bad smell and unfinished issues so they could not use the basement. I find insufficient evidence to support this claim as the weight of the evidence is that no one else smelt this smell. I find the tenant's email claiming a 'C' smelt it is hearsay as there is no direct evidence from 'C' and the landlord who employed him claimed that 'C' never mentioned it to him. Furthermore, I find the weight of the evidence is that the tenants were using the whole house as the landlord's photographs which were taken by the realtor illustrate. Although the tenant said he just left some furniture down there, I find the weight of the evidence is that they were using the bathroom, kitchen and other areas in the basement as there are personal items scattered around the rooms indicating family occupancy. I find email evidence, the oral evidence of the landlord and invoices show the landlord attended to issues promptly but had some difficulty in scheduling repairs to suit the tenant's convenience. I find insufficient evidence that any unfinished issues were caused by the landlord's failure to maintain the home pursuant to section 32 of the Act or due to the landlord's act or neglect. I find the weight of the evidence supports the landlords' contention that any repairs not completed promptly was due to the tenant's inaccessibility to schedule service persons. I dismiss this claim of the tenant for a rent rebate.

The fourth claim is for compensation for cleaning the home for realtor showings and allowing the showings. I find insufficient evidence that the landlord requested the tenant to clean the house for showings or to be present at the showings. In fact, I find the landlord's evidence credible that the tenants being present inhibited showings. I find the tenants were served legal notice as required by section 29 of the Act and often more personal notice as they demanded. I find the Act does not require the landlord to compensate the tenant for real estate showings to prospective purchasers. I dismiss this claim of the tenant.

In general, I find the landlord did not through act or neglect or violation of the Act cause any of the losses claimed by the tenant. I find the weight of the evidence is that the landlord did not cause their loss of peaceful enjoyment. Selling property may be difficult

but the Act provides that tenants must cooperate if given legal notice which I find was given in this case. I find the landlord and their agents tried diligently to suit the tenants' convenience. I dismiss the application of the tenant in its entirety without leave to reapply.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and find him not entitled to recover filing fees due to his lack of success.

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: December 22, 2016

Residential Tenancy Branch