



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNDC & MNSD

Introduction:

This hearing dealt with an application by the tenant seeking compensation for loss of use of the rental unit and a request for the return of his security deposit plus interest. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Is the tenant entitled to compensation for loss of use of the rental unit? Is the tenant entitled to the return of his security deposit plus interest?

Background and Evidence:

This tenancy began on May 1, 2002 for the monthly rent of \$900.00 and a security deposit of \$450.00. Although the parties entered into a written tenancy agreement I was not provided a copy for this hearing.

The tenancy ended effective November 22, 2008 after there was a flood in the rental unit. The flooding was apparently a result that the septic tank to the rental unit was not cleared out and it backed up into the rental unit.

The tenant was not satisfied that the landlord would have the rental unit cleaned to a reasonable and safe standard and gave notice that he would be vacating on November 15, 2008 effective November 22, 2008. The landlord and the tenant met on November 22, 2008 at which time the landlord did not return the tenant's security deposit. It was established in the hearing that the tenant did not provide the landlord a written tenancy agreement.

There was no agreement between the parties respecting the responsibilities or obligations respecting the septic tank or any clear term in the tenancy agreement which required the tenant to empty the septic tank. The landlord relied on an alleged term in the tenancy which stated that the tenant was responsible for general maintenance of the rental unit.

The landlord previously resided in another unit on the same property up until approximately May 2004. After this time he no longer resided on the property but continued to manage the tenancy. Up until May 2004 the landlord emptied the septic

tank. The tenant stated that he was never responsible for emptying the septic tank and was not instructed to empty the tank. Apparently the tank was not emptied since May 2004 until the flooding on November 13, 2008.

The landlord stated that he responded immediately to the flooding and arranged for a restoration company to begin the clean up. He understood that the tenant would briefly reside with relatives until the unit was cleaned and that they would discuss rent reduction for December 2008 when the tenant returned. However, within a few days the tenant indicated he would be vacating effective November 22, 2008. The landlord alleged that the flood was due to the tenant's negligence in not having the septic tank emptied. The landlord disputes the tenant's position that the rental unit was not going to be cleaned in a manner which met reasonable health and safety standards.

Analysis:

There are several issues related to this application. The first issue is whether the tenant had sufficient grounds to end the tenancy early. Section 45 of the *Act* allows a tenant to end a tenancy if the landlord has breached a material term of the tenancy agreement and has not resolved the breach in a reasonable timeframe after being informed of the breach by the tenant in writing.

The tenant submitted that he was not satisfied that the landlord would restore the rental unit in a manner that would be safe after the sewage flood. However, the tenant has failed to provide any evidence that this was the case. I find that the landlord was in fact working with the restoration company to clean up the mess and restore the rental unit for the tenant to re-occupy. I am not satisfied that the tenant had the knowledge or expertise to determine that the clean up would not meet reasonable health and safety standards. On this basis I find that the tenant did not have reasonable grounds on which to end this tenancy without proper notice. I deny the tenant's request for compensation comprised of a rebate of the rent paid for November 2008.

I grant the tenant's request for the return of his security deposit. The landlord must return a tenant's security deposit if they do not file an application to retain the security deposit or do not have written consent from the tenant to retain the security deposit. I find that the landlord had no grounds on which to retain the tenant's security deposit and I Order that the landlord returns the tenant's security deposit plus interest for the sum of \$465.93.

Conclusion:

I grant the tenant a monetary Order for the sum of **\$465.93** representing the sum owed for his security deposit plus interest. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated January 21, 2009.
