



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, FF

Introduction

This matter dealt with an application by the tenant for a monetary order for money owed or compensation for loss or damage under the *Act*, to seek an Order for the landlord to comply with the *Act*, regulation or tenancy agreement, to seek an Order for the landlord to make repairs to the property and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on, April 09, 2009.

Having heard the evidence of the parties and witnesses, under oath, and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence, and to cross-examine the other party and witnesses, and to make submissions to me, I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order for loss or damage?
- Has the landlord complied with the *Act*, regulation or tenancy agreement?
- Has the landlord complied with the *Act* in regards to repairs to the property?
- Are the tenants entitled to recover their filing fee for this application?

Background and Evidence

This tenancy started on September 07, 2008. Rent was \$995.00 per month payable on the 5th of each month. The tenants paid a security deposit of \$447.00 on September 19, 2008.

The tenants testify that they were approached by the landlord to rent his condo unit and were led to believe they were renting the whole unit. The landlord explained that there were repairs and renovations that needed to be carried out on the property but these should only take one to two weeks. The tenants were able to store some of their belongings in the basement of the property prior to moving in. The renovations to the basement were not completed at this time.

The tenants testify that they were looking at another property to rent at the time which also needed repair work and were told these repairs would take a few months to complete. As the landlord of the condo told them his repairs should only take one to two weeks they elected to move in while the work was being completed. The tenants testify that they had ongoing issues with the contractors used by the landlord. It appeared that they concentrated their efforts and work on completing the basement and the tenants found out from the contractors at this stage that the basement was going to be a separate suite. The tenant's agreement states that they had use of the main level and basement storage with a laundry room.

The tenants testify that their personal property stored in the basement was being damaged by the contractors. They brought this to the landlords' attention and he gave them some other storage space. However, this was only a crawl space and not sufficient for their needs. The tenants had to rent a storage unit to store their belongings

in. As the tenant worked for the storage company he was able to get this at a reduced rate.

The tenants testify that the repairs were not completed in a satisfactory time and some are still on-going eight months later. The tenants testify that they have suffered many frustrations with some of the contractors due to them not turning up when arranged and admit that there were times that it was inconvenient for the contractors to carry out work on the premises. Consequently there were incidents of conflict between the tenant and some of the contractors. The tenant has carried out some of the repairs and cleaning to the outside area and inside the property himself.

The landlord testifies that the basement was not included in the agreement he had with the tenants. The landlord explained that the tenants were told the property was larger than the one they had moved from and disputes that the basement was included other than to store some of the tenants' belongings in when they moved in. However, the tenancy agreement, which the landlord signed, states that the tenants were renting the main floor and basement storage, not just for storage for the move in period.

The landlord testifies that the tenant was increasingly difficult in dealing with the on-going work, tradesmen and restricting the hours the tradesmen could work. The landlord has provided letters from some of the contractors detailing how uncooperative the tenant is when they are trying to gain entry or while they are working. The landlord discussed some other issues that are not relevant to this hearing.

The landlord has since sold the property and called the new owner/landlord to give evidence. The new landlord testifies that he was not involved in the previous agreements or repair work with the tenants. He has asked the previous landlord to act on his behalf as agent and the previous landlord continues to be responsible for the

repairs and maintenance work in the property. The new owner/landlord did provide a fax copy of the tenancy agreement to the hearing detailing the tenant's use of the main level and basement storage.

Analysis

I find that the landlord did not carry out the repairs to the property within the suggested time frame and it appears his work was concentrated on getting the basement suite completed. As the tenants moved into the property in good faith that the repairs would be finished within one to two weeks I find that the length of time is unacceptable for them to wait for repairs to be completed. s. 32(1) of the Act states that:

A landlord must provide and maintain residential property in a state of decoration and repair that:

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

With regard to this I **Order** the landlord to comply with the *Act* and carry out all repairs as originally agreed with the tenants. I Order the landlord to carry out the remainder of the repairs by **June 30, 2009**. No separate Order will arise from this part of the tenants claim. In respect of this the tenants must make all arrangements necessary to facilitate the speedy remedy of the repairs and not obstruct the landlord or his contractors from carrying out the repairs.

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I find that the tenants were unable to have the benefit from their right to quiet enjoyment of their home due to the length of time the repairs were taking to be completed. They were within their rights to restrict some entry of the contractors due to being afforded reasonable privacy and freedom from unreasonable disturbance s. 28 of the *Act*.

I find that the tenancy agreement refers to the tenant's use of the property which includes basement storage. As this has now been restricted from the original storage the tenants had I find the landlord in breach of the tenancy agreement and uphold the tenants claim for storage of their personal belongings. The tenants have requested \$200.00 per month for compensation for their inconvenience and loss of privacy. The landlord has already deducted \$187.00 from the tenants rent towards compensation. I find that the \$200.00 the tenants are requesting is an extreme amount for the landlord to pay in compensation as the tenant's hardship did not inconvenience their lives on a day to day basis or warrant any emergency repairs to be carried out. Therefore, I award the tenants \$150.00 for each month until the new owner took over as landlord.

The tenant's will receive a Monetary Order for the balance owing as follows:

Costs for storage	\$609.15
Filing fee	\$50.00
Less compensation already paid	(-\$187.00)
Total	\$1372.15

Conclusion

A Monetary Order in the amount of **\$1,372.15** has been issued to the tenant and a copy of it must be served on the landlord. If the amount of the order is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.



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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: May 14, 2009.

Dispute Resolution Officer