

DECISION

Dispute Codes CNR, MNDC, OLC, RP, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking orders to cancel a Notice to End Tenancy, for monetary compensation under the Act or tenancy agreement, to have the Landlord comply with the Act, to have the Landlord make repairs to the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I also note the Landlords withdrew the Notice to End Tenancy during the course of the hearing, and therefore, that portion of the Tenants' claim was not required.

Issues(s) to be Decided

Have the Landlords breached the Act or tenancy agreement, entitling the Tenants to the relief sought?

Background and Evidence

This tenancy began in February of 2009, with the Tenants paying a security deposit of \$1,150.00, and a monthly rent of \$2,300.00.

The Landlord was leaving the country for a trip overseas from July 24 to August 16, 2009. He provided the Tenants with his bank information to deposit rent payments and his cell phone number to leave voice mail for him.

According to the testimony of the Tenant, on July 26, 27 and 28 of 2009, there were rainstorms in the greater Vancouver area, where the subject rental unit is located. One of the Tenants noticed a leak in the roof over the area where he had located his home office equipment. Water from the leak entered his computer and damaged the power supply and mother board. The Tenant took the computer in for repairs and in order to save some money had a used motherboard put in, along with a power supply.

The appearing Tenant testified that he tried to call the Landlord to have someone come in to repair the roof. He says he left two voice messages, one on each of July 29 and 30, 2009. He received no response from the Landlords. He decided that since it was the summer time, and no more rain was forecast for the short term, he would wait until the Landlords returned to Canada.

In early August the Tenant began trying to contact the Landlords again, thinking they were back in Canada. In about the middle of August 2009, the Tenants became aware that the weather forecasts were again calling for rain. He tried calling the Landlords again several more times, but received no reply from the Landlords.

The appearing Tenant then decided he would purchase a tarp himself and put it on the roof to prevent the water from coming down into the rental unit again. The Tenant unfortunately ended up falling from the roof to the ground where he broke his leg in three places and shattered his kneecap. There were also complications with the post surgery care and the Tenant suffered from a severe infection in the leg.

The Tenants assert that the Landlords did not cover the roof until four weeks after returning to Canada from their trip. During this time the Tenant's wife protected the office computer and equipment so they suffered no more water damage.

The Tenants are claiming for monetary compensation of \$5,000.00, based on his loss of income for a period of 10 weeks, computer repairs of approximately \$200.00, and punitive damages as the Landlords failed to provide emergency contact information while out of the country.

In reply, the Landlords claimed the Tenants are using a room in the rental unit which was not meant to be used for an office. The subject room where the leak occurred is inside a solarium style attachment to the residential house building. The Landlords refer to this as a glassed-in patio, designed to be used as a greenhouse or temporary sunroom.

I note that the Tenants provided evidence that the subject room has electrical outlets, a phone outlet and has been used as an office since the tenancy began in February of 2009.

In further reply, the Landlords claim the Tenants have been constantly late paying the rent, although they have accommodated them lately due to the injuries he suffered and the downturn in the economy.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlords have breached the Act. Section 33 of the Act required the Landlords to post in a conspicuous place in the property the name and telephone number of a person the Tenants are to contact in the case emergency repairs are required. The Landlords failed to do this. A cell phone number for a person travelling overseas is not a sufficient contact in case of an emergency occurred, such as occurred here.

None of the arguments of the Landlords, such as late rent payments or the use of the room they call a glass patio, support dismissing or denying the Tenants' claims. The Landlords did not follow the Act which was the subject of this hearing. Any *alleged* breaches of the Act or tenancy agreement by the Tenants would be the subject of an Application by the Landlords.

As to the monetary claims in the case before me, the Tenants have the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the appearing Tenant provided insufficient evidence to verify the loss of income being claimed. There was no documentary evidence or testimony setting out the income of the Tenants or the amounts they lost during this time. While I accept the Tenant was injured and could not work, there is nothing to indicate what wage loss he suffered. Furthermore, the Tenants have asked for punitive damages against the Landlords, and I have no authority under the legislation to award a penalty. The Tenants may apply to the Director for administrative penalties, however, I have no jurisdiction to award such penalties either.

I allow the portion of the Tenants' claim dealing with the repairs, and I order the Landlords to repair the leaking roof immediately by hiring professionals skilled in this trade.

I also find that the Landlords failed to maintain the rental unit to the standard required under Section 32 of the Act, and therefore, have not complied with the Act in this second issue. I find this failure has caused the Tenants a loss of use of the room for the

five months of August through December of 2009, and loss of quiet enjoyment of the rental unit. I find that the Tenants should be compensated in the amount of \$450.00 for each of these months, totaling **\$2,250.00**.

If the repairs to the roof are not done by December 31, 2009, the Tenants may apply for a further reduction in rent until such repairs are made.

I also allow the Tenants the sum of **\$167.88** for the repair of the computer, and the filing fee of **\$50.00**.

I find that the Tenants have established a total monetary claim of **\$2,467.88** comprised of the above described amounts and the \$50.00 fee paid by the Tenants for this application.

I grant the Tenants an order under section 67 for the sum of **\$2,467.88**. The Tenants may deduct this amount from rent payments or they may serve the Landlords with the order and file the order in the Provincial Court (Small Claims) and enforce it as an order of that Court.

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 02, 2009.

Dispute Resolution Officer