Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF
CNR, MNDC, RR

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for compensation for damage or loss under the Act or tenancy agreement and for an order permitting her to deduct the cost of repairs, services or facilities from rent.

In an interim Decision issued in this matter on December 15, 2009, the Landlords were granted an Order of Possession to take effect 48 hours after service of it on the Tenant and the Parties' respective monetary claims were reconvened to January 25, 2010 for hearing.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
3. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
4. Is the Tenant entitled to compensation for damages and if so, how much?
5. Are the Landlords entitled to keep all or part of the Tenant's security deposit and pet damage deposit?

Background and Evidence

The Parties agree that the tenancy ended on December 19, 2009 when the Tenant moved out. The Parties also agree that the Tenant has not paid rent for December 2009.

Tenant's Claim:

On August 21, 2009, the rental unit was flooded with water due to a corroded part on a hot water tank in the rental unit. The Tenant immediately advised the Landlords who removed much of the water and arranged to have a new hot water tank installed the following morning. The Tenant claimed that the Landlords left for holidays on August 22, 2009 and left her to deal with the water tank installation and removal of the rest of the moisture from the rental unit. The Tenant said she was able to borrow some fans and opened the windows when she was home but because there was a heat wave at the time, mould and/or mildew began to grow in the rental unit.

The Tenant contacted the Landlords 7 – 10 days later when they returned from holidays and advised them that some parts of the rental unit were still wet. Consequently, the Landlords contacted their insurer who had a restoration company inspect the rental unit on September 11, 2009. The Tenant said the restoration company installed drying fans and dehumidifiers that operated from September 14 - 21, 2009. During this period of time, the Tenant claimed that she could not use the bathroom in the rental unit or one of the bedrooms. To compensate the Tenant for her loss of amenities, the Landlords charged the Tenant ½ of the rent for October 2009.

During the restoration process, the restoration company discovered that the rental unit had asbestos. The removal of the asbestos was delayed at the request of the Tenant so that she could pack and remove her belongings from the affected areas. As the Tenant could not reside in the rental unit for 4 days during the removal of the asbestos, the Landlords gave her $406.84 for hotel expenses. The Tenant vacated the rental unit from October 5 – 8, 2009. The Tenant claimed that the compensation given to her to stay in a hotel was not enough so she stayed at a friend's residence for this period.

The Tenant said she went away for the Thanksgiving long weekend and during that time she contacted the Landlords to see if the rental unit was ready to move back into. The Tenant said that one of the Landlords told her that the repairs were finished but when she returned on October 13, 2009 she did not believe the rental unit was fit to be occupied. The Tenant claimed that all of the flooring had been removed and a chemical was put on the floor. The Tenant said many of her furnishings and the refrigerator were stored in the living room so that it could not be used. The Tenant also claimed that there was black mould on the hallway walls, dust everywhere, a kitchen wall was crumbling and that two walls that had been marked for removal were still in place. The Tenant claimed that only one bedroom and the bathroom could be used.

The Tenant claimed that on October 14, 2009, a worker from the restoration company came into the rental unit unannounced and advised her that she should not be there. The Tenant said she contacted the Landlords the same day and advised them that the

rental unit was not fit for occupation. The Tenant claimed that when one of the Landlords came to the rental unit later that day to take photographs, the Tenant asked her for compensation so that she could stay somewhere else but the Landlord advised her that she could only afford to do one thing at a time (ie. pay for flooring). Consequently, the Tenant said she stayed with a friend from October 14 – 25, 2009.

The Tenant claimed that she incurred additional expenses from October 9 – 25, 2009 because she and her daughter could not prepare meals and had to eat out. The Tenant estimated that she incurred an additional $100.00 in meals for each day she did not live in the rental unit. The Tenant said that when she returned to the rental unit (after the repairs were done) she advised the Landlords that she could not afford to pay rent for November 2009 because of her additional expenses. The Tenant admitted that the Landlords offered her $471.75 in compensation but she did not accept it as she felt she should receive free rent for November 2009 as compensation for not having the use of the rental unit from October 9 – 25, 2009. The Tenant paid rent for November on December 4, 2009. The Tenant sought a rebate of rent for October 2009 of $732.00 and compensation of $1,700.00 for her meal expenses for 17 days.

The Tenant argued that the Landlords were responsible for her damages because they took an unreasonable amount of time to do repairs or to take care of the moisture in the rental unit after the flooding. The Tenant claimed that due to the delay, mould and mildew damaged the walls and flooring which had to be replaced. The Tenant also argued that it was unreasonable for the Landlords to leave on holidays rather than deal with drying out the rental unit after the flood. The Tenant also suggested that the hot water tank may have leaked due to the Landlords' failure to maintain it. The Tenant claimed that the water tank installer told her that the water tank was supposed to be drained every 6 months but she did not know if the Landlords had done so or not. The Landlords denied that it was recommended practice to drain the hot water tank every 6 months.

The Landlords said that they took reasonable steps to deal with the hot water tank leak. The Landlords claimed that before they left on holidays, they ensured that the water in the rental unit was sucked up and instructed the Tenant to dry out the unit with fans or by leaving the windows opened. The Landlords said they left the Tenant with an emergency phone number to contact them but she did not do so. The Landlords also said that as soon as they returned from holidays, they contacted the Tenant to find out how things were going. The Landlords said that once the Tenant told them there was still moisture, they contacted their insurer and a restoration company inspected the rental unit on or about September 11, 2009. At that time, the rental unit was found to be 95% dry. The Landlords also claimed that the flooring that was removed on or about October 9, 2009 was replaced on October 23, 2009 and the Tenant's furniture and contents were moved back into place for her on October 24, 2009.

The Tenant also claimed $1,000.00 in compensation because she alleged her daughter was dropped from her cheerleading team due to unexcused absences that were caused or contributed to by the Landlords. In particular, the Tenant claimed her daughter could not attend a practice on August 22, 2009 because she had to be at the rental unit for the water tank to be installed. The Tenant also claimed that her daughter missed another practice in September because the drying fans caused the breakers in the rental unit to trip and therefore her daughter's alarm clock did not go off. The Tenant further claimed that due to the mould and mildew in the rental unit, her daughter came down with (what she believed was) scarlet fever from September 18 – 28, 2009 and could not attend practices during that time.

The Landlords claimed that they were prepared to delay their vacation so that they could be around when the new hot water tank was installed but the Tenant said she would be around so they decided to leave. The Landlords said that if the Tenant had to drive her daughter to a practice she should have told them as they would have stayed instead while the water tank was being installed. The Landlords also argued that the Tenant provided no medical evidence to show that the moisture in the rental unit caused or contributed to her daughter's illness.

The Tenant said that the restoration company broke a dog gate and that the Landlords attempted to repair it but that it was not fully functional. As a result, the Tenant claimed $65.00 for a new dog gate. The Landlords argued that the gate was fully functional following the repair. The Tenant also claimed $165.00 to replace 2 vases that she said one of the Landlords broke when he flung her bedroom door open and it hit the shelving unit behind the door on August 21, 2009. The Landlords argued that the Tenant was careless in putting a shelving unit containing fragile items behind a door.

The Tenant further claimed compensation for moving expenses. In particular, the Tenant argued that had the Landlords compensated her for the additional expenses she incurred during the month of October 2009, she would have been able to pay rent for November 2009 and would not have been evicted.

The Landlords claimed that in October 2009, they compensated the Tenant $485.00 for her inconvenience following the flooding in September 2009 and a further $406.84 for the period October 5-8, 2009 when asbestos was being removed. The Landlords argued that the rental unit was fit for occupation after that period although the flooring and baseboards had to be re-installed. The Landlords said that after speaking to the Tenant about her concerns on October 14, 2009, they contacted the restoration company who provided an e-mail dated October 14, 2009 claiming that the rental unit was "liveable." The Landlords provided a further e-mail dated November 30, 2009 from the restoration company which stated that any mould in the rental unit was minimal.

Consequently, the Landlords argued that there was no reason for the Tenant to find alternate accommodations from October 9 – 25, 2009. The Landlords said they were willing to help the Tenant move her furniture and the refrigerator back into place on October 14, 2009 but before they could do so, the Tenant became very upset, left and would not return their messages.

The Landlords said they offered the Tenant a further rebate of rent of $471.75 as "global compensation" for her inconvenience during the period, August 22 – October 8, 2009 but she refused their offer. Consequently, the Landlords argued that they adequately compensated the Tenant for any reasonable, additional expenses she incurred as a result of the flooding and were not responsible for her failure to pay rent for November 2009.

Landlords' Claim:

The Landlords argued that the damages to the rental unit were caused by the neglect of the Tenant and as a result, they sought to recover their $500.00 insurance deductible from her. The Landlords claimed that because the hot water tank was corroded, it had probably been leaking slowly for several days before the flooding was discovered. The Landlords claimed that the Tenant did not discover the leak right away because the hot water tank was contained in a closet in a room which the Tenant had filled with boxes and furniture. The Landlords argued that if the Tenant had not stored an unreasonable amount of furniture and boxes against the closet door, she would have discovered the leak earlier and the damages would not have been so extensive.

The Tenant denied that there were boxes stacked up against the closet door and claimed that she did not often use that room so she would not have noticed a slow leak in any event. The Tenant said that she contacted the Landlords as soon as she discovered the flooding but was unaware at that time that it was from the water tank.

Analysis

Landlords' Claim:

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45(2) of the Act, a Tenant of a fixed term tenancy cannot end the tenancy any earlier than the last day indicated in the tenancy agreement as the last day of the tenancy.

Consequently, the earliest the Tenant could have ended the tenancy would have been May 1, 2010. As a result, I find that the Landlords are entitled to recover rent for December 1 – 19, 2009 and a loss of loss of rental income for December 20 – 31, 2009 in the total amount of **$975.00**. The Landlords may reapply for a further loss of rental income subject to their duty under s. 7(2) of the Act to mitigate their damages by taking reasonable steps to re-rent the rental unit.

Although the Landlords argued that the hot water tank leak would have initially been slow, they provided no evidence in support of that assertion. Even if it was a slow leak as the Landlords' alleged (and I make no finding in that regard), I find that there was no obligation on the Tenant under the Act or tenancy agreement to inspect the room in question on a day to day basis. Furthermore, the claim by one of the Landlords (who did not attend the hearing) that boxes were stacked in front of the closet door was contradicted by the Tenant and the Landlords offered no corroborating evidence to resolve this contradiction. Consequently, I find that there is insufficient evidence to conclude that the flooding to the rental unit was the result of the Tenant's neglect and this part of the Landlords' claim is dismissed without leave to reapply.

As the Landlords have been only partially successful in their claim, they are entitled to recover one-half or **$25.00** of the filing fee they paid for this proceeding.

Tenant's Claim:

Section 32 of the Act says that a Landlord must maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

The Tenant argued that the Landlords' failure to maintain the water tank caused the flooding. The only evidence of this however was the Tenant's hearsay evidence of what she claimed the hot water tank installer told her. As the installer did not attend the hearing to give this evidence, I find this part of the Tenant's evidence is unreliable. The Landlords claimed that their documentary evidence showed that periodic draining of the water tank was not necessary however the document they relied on (exhibit 19) says nothing about recommended maintenance. However, the Tenant has the burden of proof on this point and I find that there is insufficient evidence to conclude that the water tank leak was due to the Landlords' failure to maintain it or drain it every 6 months.

I also find that there is insufficient evidence to conclude that the Landlords' failure to stay and dry out the rental unit after the flooding on August 21, 2009 or to contact a restoration company right away resulted in further damages to the rental unit and started mould which caused or contributed to the Tenant's and her daughter's illness. The uncontradicted evidence of the Landlords was that as of September 11, 2009, the

rental unit was approximately 95% dried out. Consequently, I find that the Landlords took reasonable steps as soon as they returned from holidays 7 – 10 days later to have a restoration company inspect the rental unit for moisture and take further remedial measures (which included fans and dehumidifiers).

I also find that the Landlords had an obligation under s. 32 of the Act to remove the asbestos from the rental unit as soon as they discovered it. I find that the Landlords acted reasonably in trying to accommodate the Tenant when setting a date to have the asbestos removed and did not delay unreasonably in replacing the flooring.

The Tenant also has the burden of proof and must show on a balance of probabilities that the unit was not fit for occupation during the period, October 9 – 25, 2009 as she alleged. The Tenant argued that the rental unit was not liveable from October 9 – 25 because it had mould, no floors and base boards and her furniture and other belongings were stacked in the living room. The Tenant initially claimed that there was mould on the floor and then claimed that it was on the walls of the hall way but she provided no corroborating evidence of this. The Tenant also argued that she and her daughter were ill in December 2009 because of ongoing mould issues in the rental unit but she provided no corroborating evidence (medical or otherwise) to support this assertion.

The Landlords said they did an inspection of the rental unit on October 9, 2009 and documented the condition of each room. The Landlords admitted that there was a minimal amount of mould in a small area by the bathroom door but argued that it did not render the rental unit uninhabitable. The Landlords also provided a written statement of the restoration company to that effect. The Landlords also admitted that the Tenant's belongings were stacked in the living room but claimed that they intended to help the Tenant move them and that the kitchen was fully functional (once the refrigerator was put back).

I find that the Tenant was compensated $487.50 (or ½ of a month's rent) for her loss of amenities of the rental unit from August 21 – September 21, 2009 and that this compensation was reasonable. I also find that the Tenant was compensated $406.84 for her loss of use of the rental unit from October 5 – 8, 2009 during the asbestos removal and that this compensation was reasonable. I further find that there is insufficient evidence that the rental unit was not fit for occupation from October 9 – 25, 2009. Consequently, the Tenant's claim for additional meal expenses of $1,700.00 and for a rebate of October 2009 rent in the amount of $732.00 are dismissed without leave to reapply. However, given that the rental unit was missing floors and baseboards for 15 days (October 9 – 23, 2009), I find that **$471.75** which the Landlords offered the Tenant is reasonable compensation and I award the Tenant that amount.

Given that I have also found that the Landlords did not breach their duty under s. 32 of the Act to repair and maintain the rental unit, I find that there is insufficient evidence to support the Tenant's claim for $1,000.00 for her daughter being dropped from the cheer leading team. I also note that the Tenant provided no basis under the Act or tenancy agreement for claiming this amount and conclude that it likely would have fallen under the remedy of aggravated damages. In order to make out a claim for aggravated damages, a claimant must show that the other party acted in a high handed manner and with disregard to the rights of the party who suffered damages. I find that there is no evidence of the Landlords having acted in a high handed manner and as a result, this part of the Tenant's claim would not succeed on this basis either.

The Tenant also has the burden of proof and must show on a balance of probabilities that the Landlords damaged a dog gate and that it was not functional following the repair. The Landlords argued that the dog gate was fully functioning after it was repaired and the Tenant offered no corroborating evidence to resolve this contradiction. In the circumstances, I find that there is insufficient evidence to support this part of the Tenant's claim and it is dismissed.

Similarly, the Tenant has the burden of proof and must show on a balance of probabilities that the Landlords damaged 2 vases. The Tenant argued that the vases were damaged due to the careless act of one of the Landlords flinging open the bedroom door. The Landlords argued that the act of the Tenant in placing the vases behind a door was careless and was the cause or a contributing factor in the vases being damaged. In the circumstances, I find the Parties equally responsible for the damaged vases and as a result, I award the Tenant 50% of the amount claimed or **$82.50**.

I find that there are no grounds to support the Tenant's claim for moving expenses. The tenancy ended because of the Tenant's breach of the tenancy agreement (ie. in not paying rent for November 2009 when it was due). Furthermore, as indicated above, I find that the Landlords gave the Tenant adequate compensation for the period prior to October 9, 2009 and offered her further adequate compensation for the period October 9 - 23, 2009 which she refused to accept. Consequently, this part of the Tenant's application is dismissed without leave to reapply.

In conclusion, I find that the Landlords have made out a claim of $1,000.00 and the Tenant has made out a claim of $554.25. I order pursuant to s. 72 of the Act that the parties' monetary awards be offset. I also order the Landlords pursuant to s. 38(4) of the Act to deduct the balance remaining owing by the Tenant in the amount of $445.75 from her security deposit and pet damage deposit. I further order the Landlords to return the balance then remaining of the Tenant's deposits to her as follows:

	Security deposit:	$487.50
	Pet deposit:	$500.00
	Tenant's claim:	$554.25
	Subtotal:	$1,541.75
Less:	Landlords' claim:	($1,000.00)
	Balance Owing:	$541.75

Conclusion

The Landlords' application for a further loss of rental income and for advertising expenses is dismissed with leave to reapply. A monetary order in the amount of **$541.75** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: February 01, 2010.

Dispute Resolution Officer