

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

The Tenant said she served the Landlords with the Application and Notice of Hearing by registered mail on November 28, 2009. According to the Canada Post online tracking information, a notification card was delivered to the Landlords on December 1, 2009, however they refused service of the documents and the hearing package was returned to the Tenant. The Tenant said she then had someone else try to serve the Landlords in person with the hearing package but the Landlords would not accept service. The hearing was originally scheduled for January 29, 2010 but was adjourned to today's date. The Tenant said she was advised by the Residential Tenancy Branch that the Landlords would receive a letter advising them of the new date and time for the hearing.

Section 90 of the Act states that a Party is deemed to be served by registered mail 5 days after it is mailed even if the Party fails or refuses to accept the mail. Furthermore, I find that the Tenant substantially complied in personally serving the Landlords even though they refused service of the hearing package. For those reasons, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy fixed term tenancy started on October 1, 2009 and was to expire on October 1, 2010, however it ended on January 1, 2010 when the Tenant moved out. Rent was \$1,400.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$700.00 at the beginning of the tenancy which was returned to her at the end of the tenancy.

The Tenant said that she was unaware when she moved into the rental unit that the Landlords had received 2 fines from the municipality for by-law contraventions and in particular for renting an illegal suite with mould and a leaky roof. The Tenant said she was later advised by a by-law officer that the Landlords were ordered not to rent the rental unit and that they would be seeking an injunction. In any event, the Tenant said when she moved in, she was unaware of mould because it had been concealed with fresh paint but within a short period of time, the mould started to come through. The

Tenant also said that the roof leaked badly in a number of places throughout the rental unit and although the Landlords promised to have it repaired they never did.

The Tenant said that at some point in December 2009, a neighbour reported smelling gas coming from the rental unit and the fire department and the gas company attended the rental property and shut the gas furnace down until it could be repaired. The Tenant said she contacted a furnace repair company to repair the furnace. The Tenant said she did not know how long the furnace had been leaking gas but that the tenant in the downstairs suite was found unconscious and had to be hospitalized.

The Tenant claimed that the mould and possibly a gas leak caused both herself and her four children to become ill. The Tenant said she usually works 8 hours per day for 3 days per week at a rate of \$25.74 per hour as a practical nurse. The Tenant said that because she was ill she missed a lot of work and eventually lost her job. The Tenant sought compensation for lost wages for one week.

The Tenant also claimed that due to the unhealthy conditions of the rental unit, she and her children periodically ended up staying elsewhere during the tenancy and stayed with a friend for the entire last 3 ½ weeks of the tenancy. Consequently, the Tenant sought \$1,000.00 for her additional expenses and inconvenience of having to stay elsewhere. The Tenant said the Landlords agreed to reimburse her for her 3 months of rent and to that end gave her one cheque of \$700.00 and said they would pay more when they had the funds. The Tenant said the cheque was returned for non-sufficient funds.

The Tenant said she had an agreement with the Landlords to pay the gas and hydro for the rental property and the Landlords were supposed to reimburse her 1/3 of those amounts (for the lower suite's share) but never did. Consequently, the Tenant sought \$225.00 for this part of her claim.

The Tenant said the rental property also had a mouse infestation and as a result, a large sectional sofa sustained chew holes and some clothing and a child's mattress were damaged beyond repair and had to be thrown out. Consequently, the Tenant sought \$1,500.00 to repair the sofa and to replace the mattress and clothing.

Due to the unhealthy condition of the rental unit, the Tenant said she was forced to move out. The Tenant said she found another rental unit for \$1,700.00 per month and admitted that that amount was to rent the whole house and not just the main floor. In any event, the Tenant sought the following other compensation for having to move out of the rental unit:

- Lease pay-out of \$1,400.00 for 11 months;
- Moving expenses of \$500.00; and
- Mail re-direct fees of \$69.00

Analysis

Section 32 of the Act says (in part) that a Landlord must provide and 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. Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to the right to freedom from unreasonable disturbance.

I find on a balance of probabilities that the rental unit was not fit for occupation. In particular, I find that the Landlords were under an Order of the municipal by-law enforcement authority not to rent the rental unit until certain problems including (but not limited to) a leaky roof and mould were addressed. I further find that the Landlords rented the rental unit to the Tenant when they knew or ought to have known that it was not fit for occupation. Notwithstanding the leaky roof and mould, I also find that the rental unit had a mouse infestation and a leaking gas furnace which further made it unfit for occupation. Consequently, I find that the Tenant is entitled to recover some of the expenses that she said she incurred due to the Landlords' breach of their duty under s. 32 of the Act.

I find that the Tenant is not entitled to recover \$14,000.00 representing rent for 11 months. The Tenant is only entitled to recover any additional rent she had to incur to find another residence. The Tenant admitted that the rental rate for her new residence was \$1,700.00 per month which included the use of all of the rental property including a basement suite. The Tenant also admitted that she did not have the use of the basement suite at her former residence. As a result, I find that the difference in the rental rates for the 2 residences (ie. \$300.00) can be accounted for given the extra amenities or space that the Tenant pays for at her new residence. Consequently, I cannot conclude that the Tenant has had to pay more to rent elsewhere and that part of her claim is dismissed.

I find that the Tenant is entitled to recover all or part of the rent that she paid for the 3 months that she did occupy or partly occupy the rental unit. In particular, I find that the Tenant was substantially deprived of the use and enjoyment of the rental unit during that time. The Tenant claimed that she lived off and on in the rental unit for the 1st two months and then did not reside there at all for the last 3 ½ weeks of the tenancy. In the circumstances, I find that the Tenant is entitled to recover ½ of her rent payments for the first two months and all of her rent for the last month for a total of **\$2,800.00**.

I also find that the Tenant is entitled to recover her reasonable moving expenses. Although the Tenant did not provide any documentary evidence to support this part of her claim, I find that **\$500.00** is a reasonable amount to move an entire household for one adult and four children and as a result, I award the Tenant that amount. I further find that the Tenant is entitled to recover her expenses for re-directing mail in the amount of **\$69.00**.

The Tenant sought compensation of \$1,000.00 for “stress, hardship and food expenses” to stay elsewhere for 3 ½ weeks.” RTB Guideline #16 – Claims in Damages describes aggravated damages (in part) as follows at p. 3:

“These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering.”

In the circumstances, I find that when the Landlords rented the rental unit to the Tenant knowing that it was not fit for occupation, they acted recklessly and with indifference to the consequences it might have for the Tenant and her children. Consequently, I find that the Tenant is entitled to **\$1,000.00** in aggravated damages for her stress, hardship as well as for food expenses she incurred throughout the tenancy when she had to stay elsewhere but particularly during the last 3 ½ weeks of the tenancy.

I find on a balance of probabilities that the Tenant probably did miss some work due to being ill and having to look after sick children, to find other accommodations and to deal with the ongoing problems that the condition of the rental unit created. The Tenant sought compensation of \$850.00 as lost wages for one week however this does not correspond with her evidence of her usual work hours each week. Consequently, I award the Tenant the amount of **\$617.76** representing 24 hours at \$25.74 per hour.

The Tenant also sought \$1,500.00 compensation to repair a sofa and replace clothing and a mattress she said were damaged by mice. While this may have been the case, I find that there is insufficient evidence of this loss or the costs to repair or replace them and as a result, this part of the Tenant’s claim is dismissed.

In the absence of any evidence from the Landlords to the contrary, I find that there was an agreement that the Landlords would reimburse the Tenant 1/3 of her expenses for hydro and gas for the rental property but that they have failed to do so. However, the Tenant did not provide any utility statements in support of this part of her claim and as a result I am dismissing it with leave for her to reapply for those expenses.

The Tenant also sought \$422.00 for a repair bill for the furnace. The Tenant said the bill was put in her name but she refused to pay for it. The Tenant said she has spoken to the company in question and they have agreed to bill the Landlords instead. In the circumstances, I find that there is no need at this time to make a compensation order but the Tenant is granted leave to reapply for this part of her claim if she ends up having to pay for this bill.

In summary, I find that the Tenant has made out a claim for the following:

Loss of use of Suite:	\$2,800.00
Moving expenses:	\$500.00

Mail expenses:	\$69.00
Aggravated Damages:	\$1,000.00
Loss of Wages:	<u>\$617.76</u>
Total Owing:	\$4,986.76

Conclusion

A monetary order in the amount of **\$4,986.76** 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: April 29, 2010.

Dispute Resolution Officer