



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, MNSD, MNDC, and RP

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application to cancel a Notice to End tenancy for Unpaid Rent; for the return of their security deposit; for an Order requiring the Landlord to make repairs; and for a monetary Order for money owed or compensation for damage or loss.

At the hearing the Tenant withdrew the application to cancel a Notice to End Tenancy for Unpaid Rent and for an Order requiring the Landlord to make repairs, as the rental unit has been vacated. At the hearing the Tenant withdrew the application for the return of the security deposit, as the deposit has been returned.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to cross-examine the other party, and to make submissions to me.

The Tenant stated that she submitted several photographs in evidence that were not before me at the time of the hearing. She stated that these photographs support her claim for compensation for damage to her personal property. As the Tenants did not make reference to a claim for compensation for damage to personal property in the Application for Dispute Resolution, I decline to consider that matter at this hearing. In the Application for Dispute Resolution the Tenants only declared they are seeking compensation, in the amount of \$10,000.00, for being unable to use the basement, and this hearing will be restricted to that claim.

Issue(s) to be Decided

The only issue to be determined at this hearing is whether the Tenants are entitled to compensation for being unable to use the basement for a portion of their tenancy.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2009; that the tenancy ended on August 01, 2010; and that the Tenants were required to pay monthly rent of \$1,350.00.

The Landlord and the Tenant agree that this is a single family dwelling with three bedrooms upstairs and a large room that would typically be used as a recreation room in the basement. The parties agree that the basement of the home flooded on three occasions during this tenancy with the first two floods happening sometime in August or September of 2009.

The male Landlord stated that they originally believed the flood was caused by water accumulating in a "sink hole" and that they remediated that area shortly after the flood. He stated that the second flood occurred because the contractor who remediated the original problem inadvertently left a tap running. He stated that after the second flood they removed the Tenant's property from the basement and made arrangements to dry and protect it. The Tenant did not dispute any of this testimony.

The male Landlord stated that the basement flooded a third time sometime later in the fall of 2009. He stated that they remediated the perimeter drains after this flood. The Tenant did not dispute any of this testimony.

The male Landlord stated that sometime shortly after the second flood they hired a professional to air out the basement; that in September of 2009 they installed a dehumidifier in the basement to eliminate the musty smell; and they removed the carpet in September or October in a further attempt to eliminate the musty smell. He stated that they did not replace the carpet in the basement because they wanted to ensure that they had solved the drainage problem before installing new carpet.

The Tenant contends that the smell emanating from the basement area is unbearable and has rendered the basement area unusable. She stated that the odor persisted even after the carpet was removed, although she does not know where the odor is emanating from. No independent evidence was submitted to corroborate the Tenant's testimony that the smell in the basement renders the area unusable.

The male Landlord stated that the basement has always had a slight musty odor; that the odor became worse after the floods; that the odor improved after they had it professionally aired; that the odor would have been even less evidence if the Tenant had opened windows and used the dehumidifier that had been installed.

The Tenant stated that once the Landlord installed a lock on the door leading from the basement to the upstairs they left the windows open at all times. The male Landlord stated that he has never found the windows open in the basement, although he goes to the rental unit approximately once per week.

The female Landlord stated that once the dehumidifier had been installed the basement was fully usable. She agreed that an unpleasant odor could be detected upon entering the basement but that within a few seconds it was no longer noticeable.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Tenant and I find that the Tenant has submitted insufficient evidence to establish that the odor in the basement rendered the area unusable during the latter portion of this tenancy. In reaching this conclusion, I was highly influenced by the absence of evidence from an independent party that corroborates the Tenant's testimony that the smell was unbearable or that refutes the Landlords' testimony that the smell did not prevent the Tenant from using the basement.

Based on the Landlord's acknowledgment that there had been three floods in the basement, with the first flood occurring in August or September; that the basement had to be dried and aired out; and that the carpets in the basement were removed in September or October, I find that it would be reasonable to conclude that the Tenants use of the basement was disrupted for approximately three months. As the basement represented one large room in a three bedroom home, I find that the Tenants are entitled to compensation in the amount of \$450.00 for the inconvenience associated to the floods and to removing the smell from the basement area, which is calculated at a rate of \$150.00 per month.

Based on the Landlord's acknowledgment that the carpet had been removed from the basement in September or October of 2009 and was not replaced during this tenancy, I find that the value of this tenancy was reduced by \$50.00 for each month that the Tenants lived in the rental unit without carpeting in the basement. I therefore find that the Tenant is entitled to compensation, in the amount of \$550.00, for being without carpet from September of 2009 until July of 2010, which is eleven months.

Conclusion

I find that the Tenants have established a monetary claim, in the amount of \$1,000.00, in compensation for the basement flooding and I grant the Tenants a monetary Order for this amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: September 03, 2010.

Dispute Resolution Officer