



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations or tenancy agreement and the recovery of the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 19, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there damages and loss to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for damages or loss and if so how much?

Background and Evidence

This tenancy started in March 1, 2001 as a month to month tenancy. Rent is \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$335.00 in February, 2001.

At the start of the hearing the Landlord requested their Witness M.M. be allowed to give his testimony as he had a limited amount of time to give the hearing. The Tenant agreed as they had requested this Witness be summons to testify. The Witness said that he was involved with the clean up and repairs of the Tenant’s unit as well as 3 other units in the Tenant’s building. He said he started the job on January 11, 2010 when he made an emergency call to the building due to water leaking into the units. He said he completed the job on March 12, 2010. The Witness said he was aware of two main water leaking incidents; one on January 11, 2010 and one in or about the first week of February, 2010. He said the Tenant’s unit was the slowest to dry out as he believed the Tenant turned off the drying fans and dehumidifiers, which slowed the drying of the unit and resulted in the repairs being delayed. The Witness continued to say that it is common to make repairs to a unit while the occupants continue to live in the unit. He

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said his company tries to accommodate the needs of the occupants and in this situation the occupants did live in the units while the drying and repairs were completed.

The Witness continued to say that the source of the water leak was a hole in the roof of the building and the water came in through the roof and then down the walls into units 409, 309, 209 and 109. The Tenant's advocate asked the Witness to confirm the water damage was a result of the hole in the roof. The Witness confirmed this to be the case. The Landlord asked the Witness to give his opinion why the Tenant's unit took the longest to dry out. The Witness said he believed it was because the Tenant turned the drying machines off at different times, which hampered the drying operation.

The Tenant started her testimony by itemizing her claim for damages and loss. She said she is claiming for two months rent in the amount of \$1,500.00 plus \$100.00 for utilities. She said her unit was uninhabitable from January 12 to March 12, 2010. The Tenant continued to say that she was unable to cook meals at different times due to the clean up and repairs so she is claiming for \$468.00 in restaurant bills. In addition the Tenant said that it was difficult for her to be on time due to the clean up and repairs in her rental unit so she took taxis instead of public transportation so she would not be late or work or appointments, the taxi fares claim is \$523.21. The Tenant continued to say that she hired a person to supervise and clean the unit for \$450.00 while she was out of town. The affidavit from R.H. the person the Tenant hired puts the Tenant out of town from February 9, 2010 to March 4, 2010. The Tenant said the balance of her claim is for \$3,000.00 for aggravated damages due to the disturbance in her life, both socially and professionally, during the time that her unit was cleaned and repaired. She said her health and well being was threatened to the point her friends were worried about her. The Tenant said her total claim is \$6,021.25.

The Tenant said she submitted 2 affidavits, a disc of photographs of her unit under construction, a video of her unit from January 19 to 28, 2010 while clean up and repairs were being done and a number of written evidence items as proof of her claim.

As well, the Tenant said that the Landlord refused her request to put her in a hotel and to store her belongings while the clean up and repairs were being done.

The Landlord said this has been a good tenancy and they have offered compensation to the Tenant of \$742.67 as they would like to settle this dispute amicably. The Landlord said they have settled with the other three tenants. One of the tenants moved out and the settlement was \$110.00 put towards unpaid rent, one tenant settled for the rent increase to be waved in the amount of \$240.00 over the year and the third settled for one month rent of \$750.00 plus the rent increase being waived for a total amount of \$990.00. The Landlord said it is still their hope to settle this dispute amicably.

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The Landlord continued to say that the Tenant was difficult throughout the clean up and repair process. The Landlord said the Tenant turned off the drying equipment and made it difficult for the workmen to enter her rental unit and to do work in the unit. The Landlord has submitted notes and letters from the Restoration company manager and assistant to the manager sighting both these problems with the Tenant's cooperation in the clean up and repair. They said that the lack of cooperation extended the time to complete the work and increased the Landlord's costs to do the work. The Landlord continued to say that they have been responsible in dealing with this issue and provide a time line of their responses to the water leak problem. They said the time line shows their responses to problems have been the same day if not in hours of the notification of the problem. The Landlord also said that they have use reputable companies to do the work.

The Landlord continued to say it is still their intention to settle the dispute amicably so at the end of the hearing the Landlord contacted the owner of the building to get authorization for a final settlement offer. The Landlord said they were authorized to offer the Tenant \$1,600.00 as full settlement for the disturbance that she experienced while the rental unit was cleaned and repaired.

The Tenant said the offer was not enough and she declined it.

Analysis

Section 33 (1) says that an, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or

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(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

The Landlord said the tenants in the building including the Tenant have the contact number for the Landlord for emergency situations. The Tenant said she was able to contact the Landlord when the leak was discovered and the Landlord responded in a timely manner. I find from the testimony and written evidence the Landlord acted in a timely and responsible manner when informed about the water leak on January 11, 2010 and subsequent events in the clean up and repair of the water damage.

Section 32 (1) says 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.

I find that the Landlord did make timely repairs to the units and the building and the Landlord used accredited companies. It is my finding that the Landlord did meet their responsibilities to repair and maintain the rental units and the building.

The Landlords have testified and have submitted written evidence that they made their best efforts to make timely repairs to the units and have compensated 3 of the 4 tenants for the disturbance that the water leak problem caused. The Tenant has testified and submitted written evidence that she has not been offered sufficient compensation for her loss of use of the rental unit, costs that she incurred due to the clean up and repair work and for aggravated damages that she has suffered. Policy guideline 16, **Claims in Damages**, says aggravated damages are designed to compensate a person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the person's suffering. The damages must be caused by a deliberate or negligent act or omission of the wrongdoer. As well the arbitrator does not have the authority to award punitive damages, to punish the respondent. I find that the Landlord responded responsible to the water leak emergency in the rental units and the building and therefore I dismiss the Tenant's claim for aggravated damages of \$3,000.00 without leave to reapply.

In regard to the Tenant's claim for lost of use of the rental unit, I find that the Tenant lost the use of part of the rental unit, but did have use of the bedroom and part of the kitchen and living room therefore; I find in favor of the Tenant for $\frac{2}{3}$ of the rent for 2 months in the amount of $\$750 \times 2 = \$1,500 \times \frac{2}{3} = \$1,000.00$. As well, in the affidavit of R.H. she says the Tenant was out of town from February 9 to March 4, 2010. I find the claim for loss of use of the unit is reduced by the percentage of time that the Tenant was actually in the unit, from January 11 to February 9, 2010, 28 days and from March 4 to March 12, 2010, 8 days for a total of 36 days. The total number of days the work was done is 59 days, therefore the Tenant was in the unit for 36 days of 59 days or 61% of the time the clean up and repairs were being done. I find for the Tenant in regards for her claim for loss of use of the rental unit, in the amount of $\$1,000.00 \times 61\% = \610.00 .



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In addition I find that the Tenant has not established grounds that prove that the clean up and repair work to her rental unit was the sole reason that it was necessary for her to change her transportation needs from public transport to using taxis. The claim of \$523.21 for taxi costs is dismissed without leave to reapply.

The Tenant has provided photographic evidence that indicates her kitchen was compromised during the time that she was in the unit and repairs were happening. As a result the Tenant said that she was unable to cook at various times during the clean up and repair. I find for the Tenant in regards to her claim for additional meal costs in the amount of \$468.00.

As the Tenant has been partially successful in this matter, she will receive a monetary order for the sum of \$610.00 for loss of use of the unit, \$468.00 for costs the Tenant incurred and the \$50.00 filing fee. The total amount of the monetary order is \$1,128.00.

Conclusion

A Monetary Order in the amount of \$1,128.00 has been issued to the Tenant. A copy of the Orders must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.
