



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF
 MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The landlord's application is for a monetary order to keep the security deposit, compensation for damage or loss and recovery of the filing fee. The tenant's application is for a monetary order for compensation for damage or loss, return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is either party entitled to any of the above under the Act.

Summary of Background and Evidence

This 1 year fixed term tenancy started May 1, 2010 with monthly rent of \$1000.00, the tenants paid a security deposit of \$500.00. The landlord named in this application is the original lessee of the original lessor, and is the landlord of the sub-tenant.

The landlord testified that the tenants gave only 5 days notice to vacate the 1 year fixed term tenancy and that to date the landlord has not been able to find new renters for the suite. The landlord stated that the suite was heated by a forced air furnace, controlled by the landlord and that in early May 2010 after complaints of the suite being cold, the landlord provided the tenants with a space heater. In September or October after receiving new complaints about the suite being cold, the landlord provided the tenants a second space heater.

The landlord stated that they were notified of a plumbing leak on October 4, 2010 and made arrangements to have a plumber come to the property on October 10, 2010; the plumber required a part to fix the leak and left with the leak not repaired. The landlord testified that per the plumbing company, the leak was caused from a plugged line outside of the residence and not a leaking toilet. The landlord stated that on October 24 or 26, 2010 the landlord had the plumber return to the unit to complete the repairs. During the October 24 or 26, 2010 visit to the suite the landlord discussed replacement of the carpets with the tenants. On October 26, 2010 the tenants provided the landlord with 5 days notice in writing that they were vacating the suite effective October 31, 2010.

In this hearing the landlord did not refer to any further damage having been done to the unit by the tenants but maintain that as the tenants denied the plumber access to the suite, the tenants are therefore responsible for the damage to the carpets from the leak.

The landlord testified that they have not been able to rent the suite and that it currently sits vacant. On November 4, 2010 the landlord placed an ad on craigslist to rent the suite, put a 'suite for rent sign' in front of the property and has let people know by word of mouth that the suite was available to rent. The landlord claims that as it is winter and not summer that it is much harder to find new tenants for the suite.

The landlord is seeking \$6000.00 for loss of rental income and damage to the property.

The tenants testified that from the onset of the tenancy there were problems with heat in the suite they occupied and that repeated requests to the landlord to provide heat were disregarded. The tenants were provided a space heater by the landlord in May however when the space heater was used the electrical breaker would trip. In or around September the tenants complained again to the landlord about the suite being cold and the landlord provided the tenants with a second space heater. The tenants stated that they believe the electrical in the suite to be very old and incapable of providing power to 2 space heaters.

The tenants stated that in the third week of September they noticed the carpet in the children's bedroom getting wet and they contacted the landlord about this matter. While not confirmed, the tenants believed the leak to be coming from the toilet. On October 12, 2010 the tenants contacted the landlord again as the plumbing was still leaking and the carpet was now emitting a foul odour. The tenant's maintain that the landlord, who had sublet the unit to the tenants told the tenants that they 'could not fix the problem because they were not the real owners of the house'.

October 26, 2010 the tenants advised the landlord in writing that they would be vacating the rental unit October 31, 2010 due to the lack of heat in the unit, the unattended leak and electrical problems.

The tenants are seeking a \$6000.00 rent abatement, \$2000.00 in punitive damages and return of the \$500.00 security deposit.

Analysis

Residential Tenancy Policy Guideline - **19. Assignment and Sublet**

Subletting

Residential Tenancy Branch
Ministry of Housing and Social Development

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

The landlord named in this application is the original lessee of the original lessor, and is the landlord of the sub-tenant. Policy Guideline 19 clearly defines the original lessee as the landlord of the sub-tenants therefore making the original lessee responsible for the duties of a landlord per the Act.

Residential Tenancy Act – **32 Landlord and tenant obligations to repair and maintain**

(1) 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

Residential Tenancy Act - **33 Emergency repairs**

(1) In this section, "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

(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.

The tenants contacted the landlord October 4, 2010 and the landlord had a plumber to the suite on October 10, 2010 although the leak was not fixed at that time. While the landlord initially acted in a timely fashion to have the leak repaired, the landlord subsequently failed to follow-up on the problem, have the plumber return to the suite

and fix the leak in a timely fashion. The soaked, foul smelling carpets were then a direct result of this failure to have the plumbing repaired in a judicious fashion. Therefore I find that the evidence supports the tenant's claim that they suffered a devaluation of the tenancy during the month of October, 2010.

I am not satisfied however that while the suite was perhaps not at the tenants preferred temperature, that the temperature was not within acceptable comfort ranges, as far as is practicable and this portion of the tenant's application is hereby dismissed.

As for the monetary order, I find that the tenant's have established a claim for \$500.00 as the landlord failed to comply with the health, safety and housing standards required by law.

Residential Tenancy Act - **16. Claims in Damages**

Types of Damages

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Residential Tenancy Policy Guideline - **5. Duty to Minimize Loss**

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Residential Tenancy Policy Guideline - **30. Fixed Term Tenancies**

Residential Tenancy Branch
Ministry of Housing and Social Development

During the fixed term a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation). Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

As the landlord made a good faith effort to have the plumbing leak repaired on October 10, 6 days after notification from the tenants about the problem, I do not find that the landlord breached a material term of the tenancy agreement. The tenants did not seek remedy through this office to obtain an order for the landlord to comply with the Act regarding the required repairs.

The tenants did seek guidance from this office regarding the fixed term tenancy however and while Policy Guideline 30 states that a tenant 'may end a tenancy if the landlord has breached a material term of the tenancy agreement', it also states that a tenant 'must give proper notice', in this instance the tenants did not give the landlord proper notice.

I find that the landlord has established a monetary claim for \$1000.00 for rental loss for the month of November, 2010.00.

I do not find that the tenant's have met the burden of proof in establishing a monetary award for breach of contract or punitive damages and this portion of the tenant's application is hereby dismissed.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

The landlord has established that the tenants did not give proper notice per the act and the landlords are entitled to recovery of the November rent.

I do not find however that the landlord has met the burden of proof that they have made reasonable efforts to re-rent the rental unit or site at a reasonably economic rent to mitigate their loss and this portion of the landlord's application is hereby dismissed.

Residential Tenancy Act Section 39 Landlord may retain deposits if forwarding address not provided

Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

As the landlord has not met the burden of proof that there has been damage caused solely by the tenants to the property and the damage referred to in this hearing was caused through the landlord's delay in having the leak repaired, I order the landlord to return the tenants \$500.00 security deposit and this portion of the landlord's application is hereby dismissed. The tenants will be provided a monetary order to recover the security deposit.

Neither party entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant's have established a monetary claim of \$500.00 as the landlord failed to comply with the health, safety and housing standards required by law and a monetary claim of \$500.00 for return of the security deposit. The balance of the tenant's application is hereby dismissed.

I find that the landlord's have established a monetary claim of \$1000.00 for loss of rental income for the month of November. The balance of the landlord's application is hereby dismissed.

A monetary order in the amount of **\$1000.00** has been issued to the Tenants 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.

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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 13, 2010

Dispute Resolution Officer