

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for damage or loss, return of the security deposit and recovery of the filing fee. The tenant participated in the conference call hearing but the landlord did not. The tenant submitted evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started May 15, 2010 with a monthly rent of \$825.00 and the tenant paid a \$412.50 security deposit.

The tenant testified that she had completed a walk through with the landlord and that the landlord had agreed to clean the suite and complete a number of repairs to the unit. The tenant took possession of the unit but could not move in due to the amount of cleaning that was required and as the landlord had not completed any repairs as promised. The tenant contacted the landlord by email on May 17, 2010 regarding the issues and the landlord replied back that he would take care of any issues on May 22, 2010.

The suite was littered with rodent droppings, kitchen cabinets were rotten and moldy, the bathroom fan was left hanging from the ceiling, walls needed to be patched and the landlord was to paint the unit.

The tenant stated that on May 29, 2010 when the landlord had still not made good on his promise to clean and complete the required repairs, the tenant gave the landlord written notice to vacate the suite. The tenant stated that she called the landlord a number of times and sent him emails regarding the return of her rent and security deposit and the landlord never responded. On June 14, 2010 the tenant contacted the landlord in writing for the return of the security deposit and ½ month's rent paid. The tenant stated that the landlord has made no effort to contact her.

The tenant is seeking a monetary claim of \$1237.50 in return of the rent and double the security deposit.

Analysis

Residential Tenancy Act **Section 32 speaks to 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, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Act **Section 45 speaks to Tenant's notice**

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to return of ½ month's rent and the security deposit. The landlord did not provide the tenant with a habitable suite and did not correct the deficiencies in a timely manner; as a result the tenant was never able to move into the suite and had to find alternate housing.

As for the monetary order, I find that the tenant has established a claim for \$1237.50 in return of the rent and double the security deposit.

The tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim **for \$1237.50**. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$1287.50** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, 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: December 30, 2010

Dispute Resolution Officer