



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, RP, MND, MNR, MNSD, & FF

Introduction

This hearing dealt with cross applications by the parties. The landlord is seeking an Order of Possession and a monetary claim related to the tenants failure to pay rent. The tenants filed an application seeking to have the notice to end tenancy set aside and a result that the landlord be ordered to complete repairs to the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary claim due to the tenants' failure to pay the rent for December 2010?

Background and Evidence

This tenancy began on October 1, 2010 for the monthly rent of \$1,100.00 and a security deposit of \$550.00.

On December 6, 2010 the tenants were served with a 10 day Notice to End Tenancy Due to Unpaid Rent for failing to pay the rent owed on December 1, 2010.

The tenants submit that they decided not end their tenancy and not pay the rent owed under the tenancy agreement because the rental unit had become uninhabitable. The tenants stated that sometime in November, around the 15th, they discovered issues with the tiles lifting on the bathroom floor. Then, at a later date the tenants discovered a

mouldy shirt in one of the closets. At that point the tenants wrote a letter to the landlord about the problem. A copy of this note was provided as evidence by the landlord. It is not dated.

The landlord submits that he originally believed the problem with the tiles in the bathroom was due to water spraying out from the shower curtain. However, when he received the tenants note around November 25, 2010 he went to investigate the problem and discovered that water was leaking beneath the bathtub. The landlord immediately called a plumber and learned that the gaskets in the bathtub were leaking.

The landlord immediately began to fix the problem and provide receipts dated December 1, 2010 showing that he purchased the necessary parts. As of December 2, 2010 the tenants had access to the shower again. The landlord submits that the tenants had no use of the shower for 2 days.

The parties discussed the situation and the tenants were of the position that they should not be required to pay rent due to the condition of the rental unit. The landlord issued the notice to end tenancy on December 6, 2010 in person. Although the tenants filed to dispute the notice, they vacated the rental unit by December 15, 2010.

The tenants were seeking compensation for loss of use of the shower; however, I explained that their application only dealt with cancelling the notice to end tenancy and a request to have the landlord complete repairs.

The landlord requested a monetary Order for the outstanding rent for December 2010 for the amount of \$1,100.00. From this sum the landlord wished to deduct \$200.00 to recognize the inconvenience the tenants experienced while the leak in the bathtub was being resolved. From the remaining balance owed the landlord requests to retain the tenant's security deposit in partial satisfaction of this claim.

Analysis

With respect to the tenant's application I find it is no longer necessary as the tenants vacated the rental unit. I dismiss the tenants' application to set aside the notice to end tenancy and for repairs to be completed in the rental unit.

I grant the landlord's application and find that the tenants' are responsible for the outstanding rent owed for December 2010 for the amount of \$1,100.00. Section 26 of the *Act* states that tenants must not withhold rent for any reason, whether or not the

landlord has complied with the *Act* unless the tenants have a right to deduct a portion or all of the rent.

I do not accept that the tenants had any right to withhold their rent from the landlord in the circumstances before me. Although there were problems with the bathroom which required repairs, I am satisfied that the landlord took immediate and reasonable measures to begin making the repairs required to the bathroom. I accept that the tenants were inconvenienced by the loss of the shower for a couple of days but there is no basis for the tenants to conclude that the rental unit was uninhabitable or unsafe.

I find that the landlord has established a total monetary claim for the sum of \$1,150.00 comprised of the outstanding rent for December 2010 plus the recovery of the \$50.00 filing fee paid for this application. From this sum the landlord requested that I deduct the sum of \$200.00 as compensation to the tenants for their inconvenience while the bathroom was being repaired. I also deduct the tenants' security deposit of \$550.00 leaving an outstanding balance owing of **\$400.00**.

Conclusion

I have dismissed the tenants' application as it is no longer necessary because the tenants vacated the rental unit.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$400.00**. This Order may be served on the tenants. This Order may be 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: December 22, 2010.

Dispute Resolution Officer