



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, for a rent reduction for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee for this proceeding.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery on November 23, 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 in the Landlords absence.

Issues(s) to be Decided

1. Are there losses or damages to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the losses or damages and if so how much?
3. Is the Tenant entitled to a rent reduction and if so how much?

Background and Evidence

This tenancy started on October 1, 2010 as a fixed term tenancy with an expiry date of September 30, 2011. Rent is \$2,500.00 per month payable in advance of the 1st day of each month. The Tenant paid did not paid a security deposit.

The Tenant said that on November 4, 2010 the basement in the rental unit developed a water leak. The Tenant said they called the Landlord, who came to the unit and accessed the water problem with a plumber. The Tenant said the Landlord said they would fix the leak after he spoke with his insurance company. The Tenant said the leak continued for approximately 3 more weeks. During that time the Tenant said they removed wet flooring materials and tried to clean up the water the best they could. The Tenant continued to say that after 3 weeks the Landlord did hire a company to repair the leak and to repair the damage that the water leak caused in the basement. The Tenant said the repairs included new flooring material and the repair and replacement of drywall and some studs in the wall. The Tenant continued to say the repair company said the basement would not be useable until the start of February, 2011.

The Tenant continue to say that she operates her day home business out of the basement, which brings in an income of approximately \$1,200.00 per month and she also had two tenants subletting rooms in the basement from her at \$500.00 each and there was a third sublet tenant that was suppose to move in November 1, 2010 at \$1,000.00 per month. She said as a result of the leaking water pipe and flooding the two sublet tenants have moved out and the third sublet tenant could not move in. As well she had to move her day home business up stairs to her family area in the rental unit and her family could not use the basement.

The Tenant said she is making her claim for the loss of use of the basement which represents $\frac{1}{2}$ the area of the house. She said she is requesting $\frac{1}{2}$ her rent back of \$1,250.00 for November, 2010 and $\frac{1}{2}$ the rent of \$1,250.00 for December 2010 as well and an order to pay $\frac{1}{2}$ of January's rent in the amount of \$1,250.00.

The Tenant said that the Landlord was aware of the day home business and the subletting of rooms and she said the Landlord was used as a reference for the Tenants for these activities.

Analysis

Section 67 says that if a loss results from a party not complying with this Act, the regulations or the tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 33 says emergency repairs means repairs that are urgent, necessary for health and safety or for the use of residential property and emergency repairs include major leaks in pipes.

I accept the Tenant's testimony that the Tenants have lost the use of the basement of the rental unit from November 4, 2010 to an estimated completion date for the repairs of February 1, 2011. I accept this testimony as the Tenant said the work did not begin until the end of November, 2010 and the Tenant said the contractor said the work would not be completed unit the start of February, 2011.

I find that the Tenants have lost the use of the basement of the rental unit, which represents $\frac{1}{2}$ of the livable space in the unit from November 4, 2010 to the estimated completion date of February 1, 2010. Consequently I order the Landlord to pay to the Tenants $\frac{1}{2}$ of November rent from November 4, 2010 to November 30, 2010 in the amount of $\$2,500 \times \frac{1}{2} = \$1,250.00 \times \frac{26 \text{ days}}{30 \text{ days}} = \$1,083.33$ and $\frac{1}{2}$ of the December, 2010 rent of $\$2,500.00 \times \frac{1}{2} = \$1,250.00$. As well I order the Tenant to

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deduct from the January rent payment \$40.32 ($\$1,250.00 / 31 \text{ days} = \40.32) for each day in January, 2011, until the basement repairs are completed.

As the Tenant was successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$2,383.33 will be issued to the Tenant. This Monetary order represents the refund of rent for the loss of use of $\frac{1}{2}$ the rental unit for November, 2010, of \$1,083.33 and for December, 2010, of \$1,250.00 and the filing fee of \$50.00.

Conclusion

A Monetary Order in the amount of \$2,383.33 has been issued to the Tenants. 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.

The Tenant is ordered to deduct \$40.32 per day from the January, 2011 rent payment until the basement repairs are completed.

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*.
