



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The landlord and his wife both attended the conference call hearing, and one of the tenants also attended. The parties each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The parties also provided evidence in advance of the hearing. All testimony and evidence received has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord make emergency repairs for health or safety reasons?

Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?

Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This fixed term tenancy began on June 1, 2010 and expires on May 31, 2011. Rent in the amount of \$1,800.00 per month is payable in advance on the 1st day of each month,

and the tenants are in arrears \$900.00 in rental payments. On May 11, 2010 the landlord collected a security deposit from the tenants in the amount of \$900.00.

The tenant testified that at the beginning of January, 2011 the landlord accepted her verbal notice that she and her mother would be vacating the rental unit on February 15, 2011. She stated that she did not know when they would get into their new house, but if they stayed longer than February 15, 2011 they would pay a pro-rated amount of rent for that month. She stated that the landlord told her he would keep the security deposit and then rent would be paid up to February 15, 2011.

The tenant further testified that the garage on the rental property, which is attached to the house had previously been used for a marihuana grow operation and currently contains alot of mould. She stated that her bedroom is above that garage, as well as a deck, and 2 substantial leaks are present and smells badly of marihuana and mould, leaving the garage unusable. She stated that she called the landlord many times over a 6 week period in August, 2010, and when he finally called back, he confirmed that there had been a grow operation in that garage. A neighbour also confirmed it, and the tenant stated that she could also smell marihuana in the basement and controlled that smell to the best of her ability with sprays. She stated that the landlord arrived to fix the shower, but did not deal with the garage.

The tenant also testified that her mother, also a tenant, mentioned the leaks to the landlord again when he arrived to remove the carpet on the stairs in the house, in the fall of 2010. At that time the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and told the tenant that it was a technicality. Then the landlord told the tenant at the end of January that he would be moving in new tenants while they were still in the rental unit.

The tenant stated that she suffers from nausea and sharp migraine headaches from the smell, and that she studies, sleeps and watches TV in her bedroom. She moved into another bedroom on the 1st floor away from the garage about a month ago and the headaches have stopped.

She further testified that the new tenant called her 19 times on her cell phone, and drove by the unit several times. He also blocked in her car, and she called the police. She feels that she has been harassed by a person who may or may not be a perspective tenant, and the landlord had sent him there to view the rental unit without notice to the tenants.

The tenant also testified that having 2 large bedrooms and a garage were material terms of the tenancy. The tenant asks for a monetary order in the amount of \$2,700.00

for loss of use of the garage for 8 months and her bedroom for about a month. She stated that she and her mother are moving from the rental unit on February 20, 2011.

The landlord testified that in May, 2010, prior to the beginning of the tenancy the roof in the garage had been fixed and he asked the tenants to keep an eye on it. He never heard from the tenants. He also testified that he gave the tenants a half of a month rent for free in May. He stated that the tenants called in August or the beginning of September, and the landlord completed some repairs. The mother, one of the tenants, told him everything was fine.

The landlord further testified that at the end of December, 2010 he received an envelope from the tenants with 3 post-dated cheques. He stated that he also received a phone call from the tenants on or about January 15, 2011 where the tenant advised that she had lost her job and could not pay the rent for February.

The landlord further testified that on January 20, 2011 he noticed a leak in the garage, and believes that's when the leak started after it had snowed. He stated that the first he knew of the leak was on January 20, 2011.

On January 24, 2011 a new tenant wanted to move in, so he asked the tenants when they intended to move out, but they were vague about the date. He further stated that he was open to keeping the security deposit in exchange for a half month of rent.

The landlord denies that there was ever a marihuana grow operation in the garage. He further stated that he was away from mid-August to the end of August, 2010 and an agent took the tenant's calls.

Analysis

I have reviewed the tenancy agreement, and find that a garage is not included in the rent, but parking for 6 vehicles is included in the rent. In the circumstances, I find that the garage is required in order to fit parking for 6 vehicles, but I cannot conclude that the garage was a material term of the tenancy. I do find, however that the tenants did not have full use of the rental property, being the garage and the bedroom, due to the leaks in the garage. The landlord has denied any knowledge of the leaks until January 20, 2011 and the tenant testified that the landlord was advised on several occasions starting in August of 2010. It may have been helpful if the tenant had requested the repairs in writing, but I also note that the landlord acknowledged that an agent took the tenant's calls while the landlord was away and that the tenant left numerous messages in August, 2010. Therefore, I must conclude that the landlord was made aware of the

problem in August, not in January, although he may not have received the messages until he returned in early September.

With respect to the amount of damages suffered by the tenants, I must consider the degree of inconvenience caused by the lack of repair. I find, in the circumstances that the landlord's failure to complete the required repairs have devalued the tenancy by a nominal amount or by \$100.00 per month for 5 months for the garage, being September to January, and \$100.00 for the bedroom. I have no evidence of any health concerns that could not be corrected by simply moving to a different bedroom. The tenant is also entitled to recovery of the \$50.00 filing fee.

I find that the tenant's evidence with respect to a new renter calling her 19 times driving by her home is irrelevant to this application. The tenant gave the man her phone number, not the landlord. I also find that the tenant has not proven that the landlord told her he would move another tenant into the unit while she was still residing there with her mother.

Since the tenants are moving from the rental unit, I find that the tenants are no longer requiring that the landlord make repairs to the unit, site or property, or that the landlord make emergency repairs for health or safety reasons. I therefore dismiss those portions of the application with leave to reapply.

Conclusion

For the reasons set out above, I grant the tenant a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$650.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: February 16, 2011.

Residential Tenancy Branch