



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to compensation for expenses they incurred as a result of a flood that occurred in the rental unit and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2009, that the Tenants were required to pay monthly rent of \$1,750.00 during the latter portion of the tenancy, that there was a flood in the rental unit on October 20, 2010, that the Tenants were required to vacate the rental unit as a result of the flood, and that the tenancy ended as a result of the flood.

The Landlord and the Tenant agree that the flood occurred when the black water backed up through the kitchen sink and that the Strata Corporation assumed responsibility for repairing the damage caused by the flood. Neither party clearly understand what caused the flood, although there is no suggestion that it was caused by the Tenants or that it related to a problem within the rental unit.

The Tenant with the initials "O.S." stated that he noticed the sink was backing up at 8 a.m. on October 20, 2010, at which time he advised the building concierge, the building manager, and a representative of the company he believed owned the building. He stated that he contacted the Agent for the Landlord sometime between 9 a.m. and 10

a.m. on October 20, 2010. He stated that he went to work and returned home at lunch on October 20, 2010, at which time he physically brought the building manager to his unit to show him the problem, at which time arrangements were made for repairs.

The Agent for the Landlord stated that he was not advised of the problem until approximately 11 a.m. on October 20, 2010. He stated that he contacted the building manager who advised him that the incident had been reported but that nobody had investigated the problem at that point. The building manager advised him that he would take appropriate action.

The Tenant with the initials "O.S." stated that he realizes he was supposed to contact the Agent for the Landlord to report problems with the rental unit and that he contacted several other people prior to contacting the Agent for the Landlord because he "freaked out". The Tenant argued that the four hour delay in responding to the problem contributed to the severity of the problem.

The Landlord and the Tenant agree that the Tenants paid in rent for October and have already been given a rent rebate of \$583.30 due to the fact the unit could not be occupied after October 20, 2010.

The Landlord and the Tenant agree that the addendum to their tenancy agreement required the Tenants to have Tenant's insurance. The Tenant with the initials "O.S." stated that the Tenants did not have insurance.

Analysis

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers damage or loss that results from the landlord not complying with the *Act*. Section 32(a) of the *Act* requires landlords to provide and maintain a residential property in a state of repair that it complies with health, safety and housing standards required by law.

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, the landlord must repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event such as fire or flood. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

When making a claim for compensation, the Tennant bears the burden of proving that the rental unit was damaged as a result of the landlord's negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

In these circumstances I find that the Tenants have failed to establish that the flood in

the rental unit resulted from the Landlord's failure to comply with the *Act*. I find that there is no evidence to suggest that the flood occurred as a result of improper maintenance within the rental unit.

I accept there was an approximate four hour delay between the time that the Tenant reported the incident to the concierge and other persons who do not represent the Landlord. I find that the Landlord is not responsible for any delays that occurred prior to the Agent for the Landlord being notified of the problem. The Tenant had an obligation to notify the Landlord of the problem and the Landlord cannot be expected to respond to a problem until it is reported to a representative for the Landlord.

I find that the Landlord responded reasonably once the Agent for the Landlord was informed of the flood. I find that the Agent for the Landlord immediately contacted the building manager upon receiving notification of the problem and made arrangements to have the problem addressed. While it may have taken the building manager approximately two hours to address the problem after it was reported to him by the Agent for the Landlord, I find that the delay was not caused by the Landlord.

As it has not been established that the flood resulted from inadequate maintenance on the part of the Landlord nor that the problem was exacerbated by the Landlord's failure to respond in a reasonable manner, I dismiss the Tenants' claims for compensation for the expenses they incurred when they were required to vacate their rental unit.

When a landlord and a tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant is generally entitled to damages, even where there has been no negligence on the part of the landlord. Compensation in these situations is generally an abatement of rent or a monetary award for the portion of the premises or property affected.

As there is no dispute that the Tenants paid rent for October and they were unable to occupy the rental unit for the last eleven days in October, I find that they are entitled to a rent abatement of \$620.95, which is calculated at the per diem rate of \$56.45. As the Tenants have already received a rent abatement of \$583.30, I find that they are entitled to an additional rent abatement of \$37.65.

Conclusion

I find that the Tenants have established a monetary claim of \$87.65, which is comprised of an additional rent abatement of \$37.65 and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it

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: March 23, 2011.

Residential Tenancy Branch