



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on November 1, 2003. A security deposit of \$430.00 was collected near the start of tenancy, and currently the tenant pays monthly rent of \$801.00.

On or about September 12, 2010 the tenant discovered water ingress limited to the master bedroom of her 2 bedroom unit. She formally reported the problem to the landlord in writing by letter dated September 14, 2010. By September 22, 2010, the tenant was still uninformed of any action planned by the landlord. Work undertaken by the landlord to assess and remedy the problem commenced in late September 2010; it included, but was not necessarily limited to, the pulling up of a portion of the carpet and carpet underlay, the drying out of affected carpet, carpet underlay and floor, cleaning the carpet, removal of a portion of drywall on one wall, replacement of the drywall, and painting of the wall where drywall had been removed. The work was fully completed by or around November 19, 2010.

During the period from September 12 to November 19, 2010, the tenant claims there was a reduction in her full use of the master bedroom and closet. Additionally, she claims there was disruption and inconvenience for her and her family arising from tradespersons and others entering and leaving the unit, while assessment and completion of repairs were undertaken. The tenant also testified to efforts she made to communicate with various of the landlord's agents, and to the experience of frustration,

aggravation and stress arising from the uncertainty surrounding when exactly the various remedial work would be undertaken and eventually completed.

The landlord's agent testified that the amount of space affected in the tenant's unit was very limited. She also noted that wet and unpredictable seasonal weather conditions impeded the more efficient completion of repairs, some of which required minimal temperatures and relatively dry conditions. As well, the landlord's agent noted that the tenant's rent is subsidized.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/ Particular sections of the Act which directly bear on the nature of this dispute include the following:

Section 28: Protection of tenant's right to quiet enjoyment

Section 32: Landlord and tenant obligations to repair and maintain

Section 33: Emergency repairs

Further, Residential Tenancy Policy Guideline #6 addresses "Right to Quiet Enjoyment," Guideline #16 addresses "Claims in Damages," and Guideline # 22 addresses "Termination or Restriction of a Service or Facility."

Under the heading "Types of Damages" in Guideline #16, it is stated in part as follows:

In addition to other damages a dispute resolution officer may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.)

Based on the documentary evidence and testimony of the parties, which I found to be honest and forthright, I find on a balance of probabilities that the tenant has established entitlement limited to \$357.78. This amount reflects an attempt to strike a balance between the impact of the above events on the tenant and her family, which I find were generally negative, and efforts made by the landlord to coordinate and complete the required miscellaneous remedial work under challenging circumstances. The calculation of this entitlement is as follows:

67: number of days from September 14 to November 19, 2010

\$26.70: average daily rent ($\$801.00 \div 30$)

\$5.34: 20% of average daily rent

\$357.78: total entitlement ($\$5.34 \times 67$)

I find that the tenant's receipt of a rent subsidy does not bear on her entitlement to this compensation.

Conclusion

Following from all of the above, I hereby order that the tenant may withhold **\$357.78** from the next regular payment of monthly rent.

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*.

DATE: April 8, 2011

Residential Tenancy Branch