



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for abatement of a portion of the rent paid during the tenancy after the rental unit had been subject to water damage before the tenant took occupancy, and recovery of the filing fee for this proceeding.

Despite having been served with Notice of the Hearing, sent by registered mail on December 7, 2010, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to return of rent beyond rent abatement already granted by the landlord.

Background and Evidence

This tenancy began on October 1, 2010 under a three month fixed term rental agreement which ended as agreed on December 31, 2010. Rent was set to be \$1,800 per month plus \$50 per month hydro. Security and pet damage deposits have been returned and are not at issue.

During the hearing, the tenant gave evidence that on the day the tenancy was to begin, he and his spouse were advised that there had been a water leak into the rental unit and they were asked to postpone the move to October 2, 2010 which they did with the promise that deficiencies would be remedied expeditiously.

While the tenants had consented to entry by an insurance adjuster on October 7, 2010, they returned home to find that much of the flooring had been removed, their furniture had been moved into central piles and large industrial fans made the unit uninhabitable for two days.

The landlord's agent, his father, refused to have the flooring or the washer and dryer replaced for the duration of the tenancy.

The tenant stated that the landlord had reduced the rent to \$1,000 for October 2010 to cover hotel expenses and loss of use, and that he had reduced it to \$1,400 for November and December.

The tenant was satisfied with the rent reduction for October, but he stated that he paid the \$1,400 for November and December under protest given that the living conditions during that period were far below liveable. He described and submitted photographic evidence of removed baseboards and exposed mold, bare cement floors throughout much of the rental unit and loss of the washer dryer with no common laundry facilities in the building.

The tenant stated that moving was impractical as this had been intended as an interim tenancy while he and wife purchased a home. He said the further reduction to \$1,000 per month was warranted as the rental unit was otherwise was not suitable for occupancy.

Analysis

Section 32(1)(b) of the *Act* obliges a landlord to maintain a rental unit in a state that makes it suitable for occupancy taking into account its age, character and location.

Residential Policy Guideline #22 obliges a landlord to compensate a tenant for loss of a service or loss of facility.

Clearly, the landlord's agent has recognized and honoured these principles in granting a rent reduction, so the core of this dispute is the reasonable quantum proposed by both parties.

On the basis of descriptions and photographic evidence submitted by the tenant and in the absence of evidence to the contrary, I find that his proposed rent value of \$1,000 per month is fair rent and the more fitting I accept the judgement of the tenant that the landlord would have been hard pressed to initiate a new tenancy given the condition of the rental unit.

Therefore, I find that the tenant is entitled to return of \$400 of the rent paid for each of November and December of 2010 plus recovery of the filing fee for this proceeding.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$850** for service on the landlord.

April 5, 2011