

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 1, 2010. Monthly rent is \$850.00 and is payable in advance on the first day of each month. A security deposit of \$400.00 was collected.

By way of a voice mail message on December 23, 2010, the tenant informed the landlord of a water leak in the bathroom. Two days later on December 25, 2010 the tenant contacted the landlord to advise of a sewer backup affecting the bathroom. Subsequently, repairs included, but were not necessarily limited to, replacement of portions of the carpet and drywall. Repairs / restoration were not completed until February 28, 2011.

There does not appear to be any dispute that the landlord responded to the calls from the tenant in a timely manner, even while the tenant remains upset that the landlord did not undertake on-site visits in-person to monitor the status and progress of repairs / restoration. On the other hand, the landlord considers that the tenant could have reported any additional and on-going concerns or frustrations about the condition of the unit and the state of the repairs / restoration, but did not do so. Delays in the completion of repairs / restoration arose from the due process required by the respective insurance providers, as well as from the impact of the holiday season and the availability of repair / restoration personnel.

The tenant reports that full use of the unit and all of its facilities, particularly the bathroom sink and vanity, were not available to her for the better part of the period between December 25, 2010 and February 28, 2011. Overall, the tenant reports living in a unit that was generally uncomfortable while repairs / restoration took place, and notes that many of her possessions were in storage and therefore temporarily unavailable to her during some of this time. The tenant elected to continue to reside in the unit for the duration of the repair / restoration work with the exception of two (2) days in February 2011 when she stayed in a hotel.

By way of cheques and rent reductions, the landlord has already compensated the tenant in the total amount of \$400.00. However, the tenant takes the position that she is entitled to compensation in the amount of \$1,900.00; this is calculated on the basis of two (2) months rent of \$1,700.00 (2 x \$850.00), in addition to the \$200.00 deductible for her insurance. In her application, the tenant also seeks to recover the \$50.00 filing fee.

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/

During the hearing, the landlord expressed some concern about delay in the tenant's identification of a dispute around the amount of compensation already provided to her by the landlord. Related to this concern, the attention of the parties is drawn to section 60 of the Act which addresses **Latest time application for dispute resolution can be made**, and provides in part as follows:

60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy ends or is assigned.

The attention of the parties is also drawn to section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment**, and provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

Other sections of the Act relevant to the circumstances of this dispute include the following:

Section 32: Landlord and tenant obligations to repair and maintain

Section 33: Emergency repairs

Further, Residential Tenancy Policy Guideline #16 addresses "Claims in Damages," and provides in part:

Where a landlord and 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 may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Based on the documentary evidence and testimony of the parties, I find that the tenant's quiet enjoyment of the unit and full use of unit were variously curtailed for the following total number of days:

December 2010: 7 (December 25 to 31);

January 2011: 31

February 2011: 26 (28 minus 2 days spent in a hotel)

Total: 64 days

Further, on average during this period of time, I find that the tenant has established entitlement to compensation of \$12.00 per day. Over 64 days, I find that the total entitlement established, therefore, is \$768.00 (64 x \$12.00). As the tenant has achieved some measure of success with her application, I find that she is also entitled to recover the \$50.00 filing fee. The total entitlement is therefore \$818.00 (\$768.00 + \$50.00). As the tenant has already been compensated by the landlord in the amount of \$400.00, the balance of entitlement remaining is \$418.00 (\$818.00 - \$400.00).

I ORDER that the tenant may recover the above amount by way of withholding \$418.00 from the next regular payment of monthly rent, such that rent for that month becomes \$432.00 (\$850.00 - \$418.00).

Conclusion

Following from all of the above, I hereby ORDER that the tenant may withhold **\$418.00** 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: July 11, 2011

Residential Tenancy Branch