

Decision

Dispute Codes: MNDC, FF, O

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 the above under the Act, Regulation or tenancy agreement

Background and Evidence

The subject unit is located in the basement of a house where the upstairs is rented to other residents. Pursuant to a written tenancy agreement, the month-to-month tenancy began on May 1, 2010. Monthly rent is \$900.00 and is payable in advance on the first day of each month. A security deposit of \$450.00 was collected at the outset of tenancy. There is no evidence of a move-in condition inspection report having been completed.

Flooding occurred in the unit on or about May 13, 2011. In response, the landlord contacted a professional plumbing and drain service which changed both sewerage pumps on May 14, 2011. Following that, a restoration service was contacted by the landlord and work was promptly undertaken to remedy the miscellaneous related damage from flooding. These events led to one aspect of the tenant's claim for compensation.

Further, the tenant became aware that flooding had previously occurred in the unit prior to the start of this tenancy. The tenant takes the position that as the landlord i) did not inform him of the previous flooding, and ii) did not take proper steps to treat the effects of the previous flooding in accordance with "the proper health regulations," the tenants have been exposed to "highly contaminated bacteria" for "more than one year," and are therefore entitled to compensation.

Finally, the tenant alleges that compensation is due as a result of the landlord's failure to inform him of "important information about the family living on the upper level of the house." In summary, the tenant claims that while he understood there were 3 children living upstairs, in fact there are more. In the result, the tenant alleges that the unexpectedly high level of disturbance is a breach of his right to quiet enjoyment.

The tenant explained that compensation sought in the amount of \$22,000.00, reflects an approximate calculation of the double amount of all rent paid from the start of tenancy up until the time when the application was filed.

Documentation submitted by the landlord includes, but is not limited to, reference to a limited flooding event and related repairs that took place in the unit in January 2010, approximately 15 months prior to the start of the subject tenancy.

As to the disturbance alleged to be coming from the upstairs residents, the landlord testified that she offered to discuss the tenant's concerns with the upstairs residents, but the tenant expressed his wish that nothing be said.

During the course of a period of tension between the landlord and the tenant, the landlord issued a 2 month notice to end tenancy for landlord's use of property. The landlord later asked the tenants to disregard the notice. A copy of the notice is not in evidence. The tenant stated that his main reason for not vacating the unit is that it is difficult to find a unit where a landlord will permit a dog.

In view of the discomfort and inconvenience experienced by the tenants from flooding in May 2011 and related repairs, the landlord waived rent for the month of June.

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/

Consistent with the agreement of the parties during the hearing, the 2 month notice to end tenancy for landlord's use of property is hereby set aside, with the result that the tenancy presently continues in full force and effect.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the documentary evidence and testimony, I find that there is insufficient evidence that the landlord has failed to provide and maintain the unit in accordance with the above statutory provisions. I make this finding with specific reference to flooding and repairs which took place in January 2010, as well as in May 2011; in each instance there is no evidence that the landlord failed to take prompt and proper measures to remedy the problem. Further, there is no evidence that the unit fails to meet health, safety and/or housing standards required by law, pursuant to any assessment or notification provided by an authorized local or provincial government official.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides in part as follows:

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

- (b) freedom from unreasonable disturbance

As well, Residential Tenancy Policy Guideline #6 speaks to "Right to Quiet Enjoyment," and provides in part:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Having reviewed the documentary evidence, I find there is no evidence of a specific chronology of allegedly excessive noise disturbances from the upstairs residents. Neither is there any evidence that the tenant has, himself, informed the upstairs residents of his concern about noise. I also accept the landlord's testimony that the tenant declined the landlord's offer to take this matter directly to the attention of the upstairs residents.

In summary, arising from the disruption and inconvenience from flooding and related repairs which took place in May 2011, I find that the tenant has established entitlement limited to the equivalent of 1 month's rent. I also find that this entitlement has already been realized pursuant to the landlord's waiving of rent for the month of June.

I find there is insufficient evidence to support the tenant's claim for compensation related either to the flooding which took place in January 2010, or to the allegation of a breach to the right to quiet enjoyment arising from occupancy of the rental space located immediately above the subject rental unit. Accordingly, application for compensation related to these aspects of the dispute is hereby dismissed.

As the tenant's limited entitlement has already been satisfied pursuant to the actions of the landlord and, as the tenant has not otherwise succeeded in this application, I find that the tenant has not established entitlement to recovery of the filing fee.

Conclusion

With the exception of entitlement to 1 month's rent, which has already been realized by way of waived rent for the month of June 2011, the application is hereby dismissed.

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 4, 2011

Residential Tenancy Branch