



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, PSF, FF,

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to perform repairs and provide facilities and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing.

At the outset of the hearing the tenant advised that the tenancy would be ending shortly and she withdrew her claims for orders compelling the landlord to perform repairs and provide facilities. The hearing proceeded to address only the monetary claims.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the rental unit is a one bedroom, one bathroom unit for which the tenant pays \$710.00 per month in rent and further agreed that on August 13, 2011, a leak was discovered in the bathroom of the unit, the leak originating from a unit on an upper floor.

The tenant testified that when she discovered the leak at approximately 7:00 p.m., she made attempts to contact the landlord at emergency contact numbers and left voicemail messages. The fire department was summoned to the building and the water was turned off. A restoration company was summoned and was at the site when the landlord's agent J.A. arrived. The landlord testified that J.A. contacted a plumber who attended at the rental unit but was not able to complete a full repair on August 13 as he did not have the right pipes. The landlord claimed that the repair to the pipes was completed the next day.

On or about August 14, J.A. and the tenant discussed the use of another unit in the building (the "Second Unit"). The landlord testified that the Second Unit was offered to the tenant to sleep in for one night. The tenant maintained that the landlord offered her use of the Second Unit while the rental unit was being repaired.

The landlord testified that on August 15, she discovered that the tenant had moved 50% of her furniture into the Second Unit. The landlord immediately advised the tenant that she did not have permission to use the Second Unit indefinitely and demanded that she vacate the unit. The tenant testified that she contacted the Residential Tenancy Branch and was told that the landlord could not force her to leave the Second Unit without an order of possession. The landlord advised the tenant in writing that she could continue to occupy the Second Unit until August 31.

The tenant arranged for the Fraser Health Authority to inspect the rental unit on August 17 as she was concerned about mold growth. She argued that she believed that there was mould in the rental unit and because her son is asthmatic, he could not live in the unit. The Authority provided a letter indicating that a visual examination failed to show mold in the rental unit. It acknowledged that there was a "musky odour" which was usually associated with mold and went on to advise that "the presence of mold does not normally indicate a health hazard."

The landlord testified that the rental unit was liveable by August 29 and that she refused to vacate the Second Unit because she needed a place to live. Although further repairs were required to the bathroom on that date including installing drywall and flooring, the landlord insisted that the unit could have been occupied. The landlord explained that the damaged area had to be removed and the area completely dried before dry wall and linoleum could be installed. The tenant disputed that the area was liveable on August 29. The tenant further argued that throughout the first part of September as workmen continued to complete the renovation in the rental unit, she noticed that the toilet had been taken out of the bathroom. The landlord testified that the toilet had to be removed for certain parts of the work and could have been reinstalled quickly when workmen finished each day, but as the tenant had refused to sleep in the rental unit or vacate the Second Unit, the workmen didn't bother reinstalling the toilet each day.

The tenant refused to vacate the Second Unit until mid-September. The landlord testified that they had a tenant prepared to move into the Second Unit on September 1 who was unable to do so because the tenant had retained possession of the unit. The landlord seeks to recover \$785.00 for lost revenue for the Second Unit for each of the months of August, September and October.

The tenant seeks to recover \$360.00 for lost wages, testifying that she had to take 2 days off work to go to the Residential Tenancy Branch and to the Frasier Authority and to address issues arising from the aftermath of the leak. She further seeks compensation for emotional distress, loss of quiet enjoyment and the cost of moving to the Second Unit.

The tenant argued that she did not have full enjoyment of the rental unit and is therefore entitled to compensation. The landlord acknowledged that some compensation was appropriate, but noted that the tenant had continued to use the living room of the rental unit throughout the period that repairs were underway.

Analysis

The landlord had a contractual and statutory obligation under section 33 of the Act to provide to the tenant a rental unit which was suitable for occupation. Although the leak may not have been the fault of the landlord, it prevented the landlord from complying with her obligations. The tenant was entitled to live in the rental unit and enjoy freedom from unreasonable disturbance. The extended period of repairs resulting from the leak while necessary, deprived the tenant of quiet enjoyment of the unit. I find that the leak itself was repaired in a timely manner, but that the repairs, although extensive in the washroom, took an excessively long time. I accept that the rental unit was not fully restored to the tenant for approximately one month and I find that she is entitled to compensation for that period.

The tenant had some use of the rental unit during the one month period in question; she was able to store her belongings therein, she was able to use the kitchen and living areas and I find that she would have been able to use the bedroom for approximately 3 of the 4 weeks in question. However, I find that the bathroom could not reasonably have been used for most of this period. Although the landlord claimed that the workers could have reinstalled fixtures at the end of each workday, the tenant could not have kept anything in the bathroom as she had prior to the leak and she would have had to deal with no drywall or flooring. Further, the frequent intrusion of workmen into her unit while necessary, further compromised her quiet enjoyment.

I do not accept that the unit was unliveable because of mold. The report from the Health Authority shows that while an odour was detected, no mold was discovered. I do not accept that the tenant's son could not reside in the unit because of the odour. The parties agreed that he watched television in the unit and there is no evidence that he suffered any adverse reaction from exposure to this odour. Although the tenant argued that asbestos was being removed and posed a hazard, there is no evidence that there was any risk of exposure to the tenant.

Having taken all this into account, I find that an award of 75% of the tenant's rent for this one month period will adequately compensate her. I award the tenant \$532.50.

I dismiss the tenant's claim for loss of wages. The tenant provided no evidence such as pay stubs or confirmation from her employer that wages were lost and I am not persuaded that she could not have contacted the Residential Tenancy Branch or the Health Authority online or via telephone rather than attending in person. I also dismiss the tenant's claim for emotional stress as I am of the view that the compensation for loss of quiet enjoyment adequately compensates her for any accompanying stress.

I note that the tenant mentioned that she felt entitled to the cost of moving her belongings from the rental unit to the Second Unit. The tenant provided no evidence whatsoever that she incurred any expenses relating to that move and therefore has not established that claim. The claim is dismissed.

Turning to the landlord's claim, I find that the tenant was given a license to occupy the Second Unit for a defined period of time. The landlord made her position clear when she advised the tenant in writing that she was permitted to occupy the Second Unit until 1:00 p.m. on August 31. I find that the tenant had no right to occupy the Second Unit after August 31 and I accept that the landlord suffered a loss of income as a prospective tenant was not able to move into the unit on September 1. I award the landlord \$785.00 for lost income for September.

I dismiss the landlord's claim for lost income for the Second Unit for the month of August as there is no evidence whatsoever that the landlord had anticipated income for that month or that the landlord attempted to rent it to another tenant for that month. I dismiss with leave to reapply the landlord's claim for loss of income for the Second Unit for the month of October. The landlord just recently regained possession of the unit and if she makes reasonable efforts to secure a tenant for the month of October but is unable to do so, she may bring another application to recover any income lost.

As each party has enjoyed some success, they will each bear the cost of their filing fees.

Conclusion

The tenant has been awarded \$532.50 and the landlord has been awarded \$785.00. Setting off these awards as against each other leaves a balance of \$252.50 payable by the tenant to the landlord. I grant the landlord a monetary order under section 67 for \$252.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The landlord may elect to deduct this sum from

any security deposit paid by the tenant and should advise the tenant in writing if she makes this deduction.

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: September 20, 2011

Residential Tenancy Branch