



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDC MNSD OLC OPT RR FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The landlord, an agent for the landlord and nine persons for the tenants participated in the teleconference hearing.

The tenants originally applied for monetary compensation, a reduction in rent, an order of possession for the tenants and an order that the landlord comply with the Act.

The hearing first convened on August 24, 2011. On that date, I heard that the landlord may have breached the Act in such a manner that I should order the tenancy to end.

In an interim decision dated August 25, 2011, I found that the landlord had breached the Act by converting the garage into a separate rental unit. I determined that the only remedy was to end the tenancy, and I ordered the tenancy ended effective August 31, 2011. I dismissed the portions of the tenants' application regarding an order of possession for the rental unit and an order that the landlord comply with the Act, and adjourned the monetary portion of the tenants' application to be heard separately.

The hearing was reconvened on November 17, 2011 to deal with the tenants' monetary claim, as well as to hear the landlord's application. I allowed the tenants to amend their application to increase the monetary amount of their claim and to claim recovery of the security deposit. The landlord applied to keep part of the security deposit.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Is the landlord entitled to keep any part of the security deposit?

Background and Evidence

The tenancy began on May 1, 2011 as a one-year fixed-term tenancy. Six young individuals who planned to attend university beginning in September 2011 were the intended occupants of the rental unit. A parent of each of the occupants signed the tenancy agreement as tenants. None of the occupants moved into the rental unit at the outset of the tenancy, but they paid a security deposit of \$1650 and were paying monthly rent of \$3300.

On May 21, 2011, the landlord's agent and an agent for the tenants conducted a move-in inspection and filled out the condition inspection report. On the report, the tenant's agent wrote a note that all floors, carpets and linoleum were to be cleaned or replaced, and all windows were to be replaced, as per the landlord.

On June 26, 2011 the hot water tank for the rental unit broke. On June 27, 2011, the landlord began repairs related to the hot water tank, as well as other repairs or renovations.

On August 31, 2011 the tenancy ended, as ordered. The tenants had paid full rent of \$3300 for May through August 2011, with the exception of \$550 of rent that was withheld. On September 15, 2011, the landlord withheld \$550 of the security deposit and returned \$1100 of the deposit to the tenants.

Tenants' Monetary Claim – Recovery of Rent

1) Tenants' Evidence

The tenants have applied for recovery of all of the rent paid for the rental unit for the duration of the tenancy, in the amount of \$12,650, on the basis that the rental unit was not habitable.

There was some discussion at the outset of the tenancy that the windows of the rental unit would be replaced. The tenants understood that it was to be all exterior work.

At the move-in inspection on May 21, 2011, the tenants' agent, BC, told the landlord's agent, WB, that all of the carpets in the unit needed to be cleaned because they were creating an unhealthy environment.

On June 27, 2011 the landlord emailed one of the tenants, CC, to request that the door to their son's bedroom be unlocked, as the landlord would be "carrying out repairs and renovations both upstairs and downstairs, starting Monday June 27/11." The landlord also stated in her email that she had been "very busy with the water tank malfunction at the house, and other urgent renovation matters." None of the other tenants received any notice from the landlord, by phone, email or mail, about the renovations.

On or about June 28, 2011, the tenant FR attended at the rental unit, and saw that the re-flooring had begun.

On July 2, 2011, the tenant CKC attended at the rental unit. CKC's son intended to move in to the rental unit on that date but was unable to do so. CKC and his family observed that the place was in disarray, and not able to be occupied by anyone. All of the flooring had been ripped out on both levels, the hot water heater was missing, all interior doors and locks had been removed, there was dust and dirt all over the fixtures,

numerous personal possessions of the landlord were lying around haphazardly, and there was rotten food in the fridge. CKC took photographs to document all of this, and submitted the photographs as evidence for this hearing.

On July 18, 2011 the tenants wrote to the landlord requesting compensation of one month's rent commencing July 27, 2011. The landlord did not respond to the request.

In mid-August 2011, the tenant BE attended at the rental unit and the place was torn apart, with wires hanging out and debris everywhere. There were doors cut into walls, and changes to points of egress and the laundry room. At the time that BE attended, the rental unit was still not habitable. The landlord's agent told BE at that time that the renovations would be done by the time the occupants started school in September.

2) Landlord's Response

The tenants are not entitled to recovery of any rent paid for the duration of the tenancy, as they did not intend to occupy the rental unit until September, and they chose to sign the tenancy agreement for May 1, 2011 in order to secure the unit. Two of the occupants confirmed that they had jobs outside of Victoria for the summer. Furthermore, the tenants had knowledge of the pending renovations long before June 27, 2011.

At the move-in inspection on May 21, 2011, the tenant's agent BC insisted that the carpets were creating an "unhealthy environment," and they must be cleaned or replaced. The tenants were also aware that the windows were going to be replaced.

When the hot water tank malfunctioned on June 26, 2011 the landlord then decided to replace the downstairs flooring as well as the upstairs flooring. The landlord stated that the extent of the repairs and renovations was as follows:

- replacement of all windows

- replacement of carpets with linoleum and replacement of baseboards in the downstairs
- replacement of carpets with hardwood flooring upstairs
- replacement of interior doors
- upgrading of electrical panel and all circuits checked
- heating system upgraded

The landlord acknowledged that there would have been one or two days that each occupant would not have been able to live in their room while the flooring was replaced, and they would not have been able to use the kitchen for 3 or 4 days while tiles were installed. The landlord stated that “you can’t avoid doing construction without looking like a bomb hit it.” The landlord stated that all renovations were complete and the place was ready by August 15, 2011.

Security Deposit

The landlord has applied to retain \$550 of the security deposit, in compensation for the \$550 of rent that was withheld. The tenants have applied for recovery of the balance of the security deposit, in the amount of \$550.

The tenancy ended on August 31, 2011. The landlord returned all but \$550 of the security deposit and applied to keep the balance of the security deposit on September 15, 2011, which falls within 15 days of the end of the tenancy.

The tenants acknowledged that they withheld \$550 of the rent, and that they received the balance of the security deposit, in the amount of \$1100.

Analysis

Tenants' Monetary Claim – Recovery of Rent

I find that the tenants are entitled to recovery of their full rent from June 27, 2011 through August 31, 2011, on the basis that the rental unit was uninhabitable for that time.

The landlord acknowledged extensive renovations that began, at the latest, on July 27, 2011. I do not find it likely that a rental unit would be habitable when there is no hot water, the flooring, doors, windows and baseboards have been removed, and the electrical and heating systems are being replaced. I accept as credible the evidence of BE that when he attended the rental unit in mid-August, the renovations were not complete. The landlord did not provide sufficient evidence to confirm that the renovations were complete by August 15, 2011.

The tenants did not provide sufficient evidence that the rental unit was in such a condition that it was uninhabitable from May 1 through June 26, 2011. I therefore dismiss that portion of their claim.

Security Deposit

The landlord is entitled to retain \$550 of the security deposit in full compensation of her claim. The tenants acknowledged that they withheld \$550 of the rent. The landlord is entitled to recovery of that rent. The landlord applied to keep \$550 of the security deposit within 15 days of the end of the tenancy, in compliance with section 38 of the Act.

Filing Fees

As the tenants were partially successful in their application, they are entitled to partial recovery of their filing fees, in the amount of \$50.

Conclusion

I order the landlord to retain \$550 of the security deposit, in full compensation of the unpaid rent.

The tenants are entitled to recovery of their full rent from June 27, 2011 through August 31, 2011, in the amounts of \$440 for June 27-30, 2011 and \$6600 for the months of July and August 2011. The tenants are also entitled to \$50 as partial recovery of their filing fee. I grant the tenants an order under section 67 for the balance due of \$7090. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 24, 2011.

Residential Tenancy Branch