



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act by making emergency repairs or general repairs, to provide services and facilities, for compensation for damage or loss under the Act or tenancy agreement, for a rent reduction and to recover the filing fee for this proceeding.

In a previous dispute resolution proceeding held on February 20, 2012 between these Parties, the Landlord was ordered as follows:

“to have the rental unit, foundation of the building, and any other areas that may be causing water to flow, leak or flood into the rental unit during the rain, to be inspected by a professional to determine any work that needs to be done within 10 days; and if the professional determines repairs need to be done, I order the Landlord to carry the repairs out within 30 days.”

The Tenant claims on his application that the Landlord has failed to comply with this order. However, as a repair order has already been issued, it is unnecessary for the Tenant to reapply for the same relief and as a result his application for an Order that the Landlord comply with the Act by making emergency repairs or general repairs, to provide services and facilities is dismissed.

The Tenant said he served the Landlord with the application and notice of hearing (the “hearing package”) by registered mail on March 14, 2012 to his address for service set out on the tenancy agreement. According to the Canada Post online tracking system, the Landlord did not pick up the registered mail. The Tenant claimed that the Landlord also did not pick up the hearing package he sent for the previous hearing. The Tenant said he sent an e-mail to the Landlord’s (non-resident) building manager, E.M., following the previous hearing to advise her about the Order that was made. The Tenant said he has not been provided with an address for service for E.M. and she often does not respond to him. The Tenant said that E.M. advised him by e-mail on February 29, 2012 that the Landlord was waiting for a copy of the Decision to arrive in the mail before he took any steps. Consequently, the Tenant said he believes that the Landlord is able to collect his mail but has failed or refused to do so.

Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up the mail). Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to a rent reduction?

Background and Evidence

This fixed term tenancy started on May 1, 2011 and expires on May 31, 2012. Rent is \$575.00 per month payable in advance on the 1st day of each month.

The facts giving rise to the Order reproduced above are set out in detail in a Decision dated February 20, 2012. In that Decision the Dispute Resolution Officer found that in late November 2011 the rental unit sustained heavy flooding as a result of (what is believed to be) a leak in the foundation of the building. The Tenant advised the Landlord's building manager about the flooding and she said repairs would be made but they were not and the rental unit continued to sustain flooding during periods of heavy rain. The Tenant said he also sent a letter to the Landlord on November 25, 2011 setting out his concerns but he got no response from the Landlord to that letter.

The Tenant said on February 29, 2012, the building manager proposed that he could move to another suite in the rental property for the last two months of his tenancy but that he would have to pay more for rent because it was a larger suite. The Tenant said every time it rains hard, water flows into his bedroom, into the living room, and under the stairs which he uses for storage. Consequently, the Tenant said he not only loses the use of part of the rental unit during these times but has to clean up water and deal with the inconvenience and stress of it all.

The Tenant said the shower has recently broken but he admitted that he has not brought that to the Landlord or his agent's attention yet.

Analysis

Section 32(1) of the Act says that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that make it suitable for occupation by a tenant.

Section 32(5) of the Act says that a Landlord's obligations under s. 32(1) apply whether or not a tenant knew of a breach by the Landlord of that section at the time of entering into the tenancy agreement.

I find that as early as late-November 2011, the Tenant brought to the Landlord's attention the fact that there was a significant leak in the foundation that was flooding the rental unit whenever it rained heavily. I find that the Tenant got no response from the Landlord to his request for repairs and I also find that the Landlord has not complied with the Order made on February 20, 2012 to investigate and make repairs. Consequently, I find that the Tenant is entitled to compensation for the period, November 2011 to and including March 2012 in the amount of \$175.00 per month (for a total of \$700.00) due to the Landlord's failure to make repairs. ***I order pursuant to s. 65(1) and s. 72(2) of the Act that the Tenant may deduct \$350.00 of this amount from his rent for April 2012 and \$350.00 from his rent for May 2012.***

If repairs have still not been made by April 1, 2012, then I Order that the Tenant may deduct a further \$175.00 from his rent payment for April, 2012 (for a total deduction of \$525.00 or no rent payment). Similarly, if repairs have still not been made by May 1, 2012, then I order that the Tenant may deduct a further \$175.00 from his rent for May 2012 (for a total deduction of \$525.00 or no rent payment).

As the Tenant has not yet requested that the Landlord make repairs to the shower, that part of his application is dismissed with leave to reapply. As the Tenant has been successful in this matter, he is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding.

Conclusion

The Tenant's application for repairs is dismissed with leave to reapply. The Tenant's application for compensation and a rent reduction are granted on the terms set out above. A Monetary Order in the amount of \$50.00 for the filing fee has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial Small Claims Court of British Columbia 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: March 26, 2012.

Residential Tenancy Branch