



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order allowing a reduction in rent and for recovery of the filing fee.

The tenant appeared; the landlord did not appear.

The tenant testified that the landlord was served with their Application for Dispute Resolution and Notice of Hearing by registered mail on September 10, 2012. The tenant gave evidence of the tracking number and receipt for the registered mail and said that the mail was sent to the landlord's address listed on the tenancy agreement for service of documents.

I find the landlord was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a reduction in rent and to recover the filing fee?

Background and Evidence

This month to month tenancy began on October 1, 2011, monthly rent is \$1100.00 and the tenants paid a security deposit of \$550.00 at the beginning of the tenancy.

In support of their application for a reduction in their rent, the tenant stated that, despite repeated requests, the landlord has failed to complete necessary repairs to the rental unit, which is a home with acreage.

The tenant stated that the deck and railings have not been fixed, the septic field has created a sink hole in the back yard, the toilet in the ensuite is not properly flushing, the taps in the ensuite bathroom need replacing, the shower in the ensuite bathroom cannot be used, the dishwasher does not work, the oven door does not close and needs to be repaired, the stove fan needs replacing, the ceiling in the basement has fallen so that insulation is exposed, there is a rodent problem and BC Hydro has stated that there are electrical repair issues which should be attended to.

The tenant said that the deck railing is rotten and is missing boards, to the effect that she and her family are unable to use the deck for safety reasons.

The tenant said that she will not allow her children to play in the back yard as the septic field is collapsing and poses a danger.

The tenant said that she has been asking the landlord since at least June 2012 to address the repair requests, through registered mail and phone calls, but that the landlord refused to collect his mail and will not answer his phone.

The tenant said she is attempting to find a new place to live, but there is a lack of properties in her area with her specific needs.

The tenant's relevant evidence included the written requests to the landlord and his agent, the tenancy agreement and photos of the rental unit.

The tenant confirmed that she is not asking for an order requiring the landlord to make repairs, due to the property being in foreclosure as she believes the landlord would not make such repairs.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the absence of the landlord, the tenant's evidence will be preferred.

The Act requires a landlord to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation.

I accept the undisputed testimony of the tenant and I find the landlord has not taken sufficient action necessary to repair the damaged deck, the septic field, which created a danger to the tenant and her family, the plumbing and plumbing fixtures, the oven and stove fan, bathtub taps, exposed insulation, rodent infestation and electrical issues. I find this insufficient response has caused the tenants to have suffered a loss of use and enjoyment of the rental unit, causing a diminished value of the tenancy as the tenants and their family have not had full use of the rental unit.

I find that the landlord has avoided his responsibility to the tenants through his failure to accept their telephone calls and registered mail in an attempt to address the repair concerns, and I accept that he has done so since at least June 2012.

I find the only remedy available to the tenants is a reduction in rent and I therefore grant their application seeking such an order.

Residential Tenancy Branch Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As I have found that the value of the tenancy has been diminished through the landlord's ongoing failure to be contacted or make necessary repairs, creating a health and safety hazard, I find a reasonable amount for a rent reduction due to the diminished value to be \$400.00 per month. I find the diminished value should be granted retroactively for 5 months, from June 2012, when the tenants attempted contact with the landlord requesting repairs, through the latest rent payment, October 2012.

I therefore order the landlord to compensate the tenants in the amount of \$400.00 per month retroactively for 5 months, in the amount of \$2000.00. This amount may be deducted from the reduced rate of rent as described below.

I also order that the monthly rent be reduced to \$700.00, effective immediately. If at any time the landlord completes all the required repairs, he is at liberty to file an Application for Dispute Resolution, prove the repairs have been completed in a good and workmanlike manner, and seek an order from a Dispute Resolution Officer that the rent may return to \$1100.00 per month.

I find the tenants' application had merit and I award them recovery of the filing fee of \$50.00.

Conclusion

The tenants' monthly rent has been reduced to the amount of \$700.00, effective immediately with the next monthly rent payment in November 2012, until such time as the landlord completes the required necessary repairs and receives an order from a Dispute Resolution Officer returning the monthly rent to \$1100.00.

Due to the above, pursuant to section 62 of the Act, I find the tenants have established a total monetary claim for \$2050.00, comprised of a retroactive rent reduction of \$2000.00 and recovery of the filing fee of \$50.00.

I allow the tenants to redeem the amount of their monetary claim of \$2050.00 by deducting the amount of the new monthly rent obligation of \$700.00, until redeemed in

full. For clarity, the tenants may withhold the new monthly rent of \$700.00 for November and December 2012 rent in full, for a total of \$1400.00. The tenants are then authorized to withhold the balance of \$650.00 from the next monthly rent in January 2013.

If at any time the landlord receives an order returning the monthly rent obligation to \$1100.00, the tenants are authorized to further redeem their monetary claim in the same manner at the increased rate.

In the alternative, I have provided the tenants a monetary order in the amount of \$2050.00.

Should the tenancy end prior to the tenants being able to fully redeem their monetary claim by withholding or deducting from their monthly rent payments, the monetary order may be filed and enforced in the Provincial Court of British Columbia (Small Claims) for the balance due.

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: October 11, 2012.

Residential Tenancy Branch