



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.C. HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

Preliminary issue

At the outset of the hearing, when questioned the tenant said that he did not complete a detail calculations for the monetary order claimed as he was only guessing an amount at the time of filing. The tenant stated he is seeking compensation equivalent to three months of rent.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act?

Background and Evidence

The tenancy began on January 7, 2009. Rent in the amount of \$375.00 was payable on the first of each month. The tenant stated he vacated the unit in October 2011, without

providing the landlord written notice to end tenancy. The landlord stated the unit was found abandoned on February 17, 2012.

The tenant testified that he seeks compensation for loss of quiet enjoyment of his rental unit for the time period of July to September 2011 that the landlord continuously entered his unit.

The tenant testified that in July 2011, the landlord inspected the bathroom and they determined that the tiles and bathtub needed to be replaced. The tenant stated that the landlord provided an open ended notice that they would be entering the premises Monday to Thursday between 8am and 4pm to make the required repairs.

The tenant testified that he was without a bathtub, toilet and no running water for a week and decided to relocate to a hotel. Filed in evidence is a hotel receipt.

The tenant testified that he made verbal complaints to the building manager, however, they were never addressed. The tenant stated he did not contact the property manager.

The landlord's agent stated that they do not agree the tenant is entitled to any compensation. The agent stated that it was either in March or April 2011 that all the rental units were inspected to determine what work was required to maintain the units.

The landlord's agent testified that it was determined that the tenant's bathtub and toilet needed to be replaced. The landlord stated the tenant was always provided notice in advance of when the work was going to be performed.

The landlord's agent testified that the complete renovation took four days from August 12 to August 15, 2011. The landlord stated during this time period the tenant always had the use of bathing facilities as an empty unit was provided. The landlord stated during this time the tenant toilet was always functional as the new toilet was replaced at the same time as the old one was removed. The landlord stated when the contractors were working in the tenant's bathroom, the tenant was also able to use the bathroom outside the office, which is always open.

The landlord's witness testified that he was the contractor responsible and renovation. The witness stated on August 3, 2011, the tenant was provided with notice that the work would be commencing and on August 11, 2011, the tenant was provided with 24 hours notice that the work would begin on August 12, 2011 and the work would continue each day between the hours of 8am to 4 pm each day until the work was completed, which was going to be approximately five days.

The landlord's witness testified that on August 12, the bathtub and tiles were removed as the concrete wall needed to be repaired. The witness stated the new bathtub could not be replaced the same day and agreed the bathtub was not usable from August 12 to August 15, 2011.

The landlord's witness denied that the toilet and sink in the bathroom were not operational during the renovation as the new toilet was replaced the same days as the old one was removed and that no work was performed on the sink.

The witness testified while the contractors were in the bathroom performing the work, there was another washroom available for the tenant to use. The witness stated that during the repair period he did not receive any complaints from the tenant.

On cross-examination, the tenant stated that the only part of the bachelor unit that was affected during this time period was the bathroom and a small portion of the hallway as the trades people would leave their tools while working in the hallway, and the other areas were not affected at all.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the **tenant has** the burden of proof to prove their claim.

The evidence of the tenant was that he lost quiet enjoyment of his rental unit while the renovation to the bathroom was being completed between during July 2011 and September 2011. The evidence of the landlord was that they were required to perform the work and the work took place the week of August 12, and was completed by August 15, 2011. The evidence of the landlord's witness was that the tenant was without a bathtub for the period of four days, however, during this time an alternate facility was

proved for the tenants use. The evidence of the landlord and the landlord's witness was at no time was the tenant without a functional toilet or a sink.

In this case, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, temporary discomfort or inconvenience does not constitute a breach of quiet enjoyment.

However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In this case, I am satisfied that the landlord made every effort to minimize the disruption by having the work to the bathroom completed within four day and by providing an alternative facility for use by the tenant.

I accept the evidence of the parties that the tenant was did not have the use of the bathtub for four days.

However, I prefer the evidence of the landlord's agent over the tenants regarding the loss of the entire bathroom facilities. The evidence of the landlord's witness was that when the old toilet was removed the new one was installed, this is common construction practice. This is further supported by the notice of entry, which stated "you will be without a tub or shower for up to 5 days. You will always have a toilet available or one is available across from the office." I also note there was no evidence by either party that the sink in the bathroom was removed. Therefore, I find the tenant has failed to prove the entire bathroom facility was not functional during the four day period.

However, I am satisfied that during that time period the tenant lost the use of the bathtub and this devalued the tenancy. As a result, I find the tenant is entitled to reimbursement for the loss of use of the bathtub for the four days even though the landlord made every effort to minimize the disruption to the tenant.

In this case the tenant's monthly rent is \$375.00. August has 31 days in the month making the tenant's daily rent rate \$12.09. As the bathtub was not usable for four days and this was the only portion of the unit that was lost, I find the loss of the bathtub devalued the tenancy by ten percent. As a result, I find the tenant is entitled to recover ten percent of the daily rent rate for the four days. Therefore, the tenant is granted compensation in the amount of **\$4.86**.

The tenant is seeking further compensation for the cost of staying in a hotel in the amount of \$517.38. The evidence of the tenant was that he went to the hotel because of the loss of the bathroom facility.

However, the invoice submitted is for a period of August 15, to August 18. The evidence of the landlord's agent and the landlord's witness was the work was performed

the week of August 12 and was concluded on August 15, 2011. This evidence was not disputed by the tenant.

Also, in support of the landlord's position is an email dated August 15, 2011, and the email provides a table which contains details of all renovations that occurred from August 1, to August 15, 2011, which included a final inspection of the tenant's unit on August 15, 2011. This table was not disputed by the tenant.

As a result, I find the tenant has failed to prove that the cost was incurred due to loss of use. Therefore, this portion of the tenant's claim is dismissed.

I find that the tenant has established a total monetary claim of **\$4.86**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary in the above amount.

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: May 2, 2013

Residential Tenancy Branch