



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, the regulations or the tenancy agreement and an order seeking the return of double the security deposit. The tenant participated in the conference call hearing but the landlord(s) did not. The tenant presented evidence that the landlords were served with the application for dispute resolution and notice of hearing by registered mail on February 12, 2013. I found that the landlords had been properly served with notice of the tenants' claim and the date and time of the hearing and the hearing proceeded in their absence.

Counsel for the tenant testified that they have the tenants' full instructions to proceed in their absence.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit?

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

The tenancy began on or about October, 2010 and ended on February 2011. Rent in the amount of \$375.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$187.50. The tenant provided their forwarding address with the assistance of counsel to the landlord on October 31, 2011. The tenants counsel advised that the living

conditions in this complex was far below an acceptable standard. The City of Vancouver submitted an Order for injunctive relief to deal with these deficiencies. The deficiencies that directly affected the subject tenant of this hearing were; holes in the drywall, lack of hot water, consistently leaking pipes, lack of heating for the entire winter of 2010-2011, cockroach infestations, rat and mice infestations, common restrooms that were never cleaned and often not working, and a no guest policy whatsoever. The tenant made numerous requests to have these items remedied but to no avail.

Analysis

In first dealing with the tenants claim for the return of double the security deposit.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord did not return the deposit or file for dispute resolution as is required above.

I find that the tenant is entitled to the return of double their deposit of \$187.50 X 2 = \$375.00.

The tenant is also seeking the return of 25% of their rent during the time of their tenancy as compensation for having to live in deficient accommodations. Sections 27 and 32 of the Act clearly outline the landlords' obligations as follows:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Counsel for the tenant has provided detailed documentary and photographic evidence to help support the tenants' claim. I am satisfied that the tenant has provided sufficient evidence to establish that the tenancy value was compromised due to the deficiencies in the tenant's unit and the overall living conditions of the entire complex and that the landlord was in breach of sections detailed above.

I find that the tenant is entitled to 5 months of tenancy X \$93.75 (25% of monthly rent of \$375.00) for a total amount of \$468.75.

As for the monetary order, I find that the tenant has established a claim for \$843.75. I grant the tenant an order under section 67 for the balance due of \$843.75. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$843.75.

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 08, 2013

Residential Tenancy Branch

