



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wilson Recovery Society &
50 East Cordova Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter originally dealt with an application by the tenant seeking a monetary order for money owed or compensation for damages or loss under the Act, the regulations or the tenancy agreement and an order have double the security deposit returned. A hearing was conducted on May 6, 2013 whereby neither party participated in the hearing. The tenant made an application for review consideration and was successful in having a review hearing granted. The tenants counsel participated in the hearing today, the landlord did not. On June 8, 2013 the tenant notified the landlord of today's hearing by registered mail. The tenant's counsel was fully instructed and the hearing proceeded.

Issues to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy began on or about March 1, 2010 and ended on July 31, 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, cockroach infestations, rat and mice infestations, common restrooms that were never cleaned and often not working, and a no guest policy whatsoever. The tenant requested these items be repaired or replaced .

Analysis

The tenant is 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 15 months of tenancy X \$93.75 (25% of monthly rent of \$375.00) for a total amount of \$1406.25.

In 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 \times 2 = \375.00 .

The tenant was also seeking \$713.94 for loss of some personal items that he says were the result of the landlords' negligence.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant was unable to provide any out of pocket costs as claimed. Based on the insufficient and very limited information provided during the hearing I am not satisfied that the tenant has established entitlement to this claim. I dismiss this portion of the tenants' application.

As for the monetary order, I find that the tenant has established a claim for \$1781.25. I grant the tenant an order under section 67 for the balance due of \$1781.25. 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 \$1781.25.

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: June 17, 2013

Residential Tenancy Branch

