



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNSD O

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking a monetary order for money owed or compensation for damage or loss under the Act, the regulations or the tenancy agreement and to have their security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background

The tenancy began on May 1, 2012 and ended on January 14, 2013. The tenants were obligated to pay \$1650.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$825.00 security deposit. The tenancy was to be for a fixed term set to expire on April 30, 2013.

The tenants gave the following testimony:

In August 2012 the tenants noticed a stain forming on the ceiling in their suite. The tenants advised the landlord and upon further investigation it was discovered that some water was leaking through. The tenants stated that the issue was ongoing right up until they vacated the suite. The tenants stated that the water leak took four months to be found and repaired. The tenants stated that during that time the water leak had damaged the laminate flooring in their unit. The tenants stated that the amount of affected floor space that was rendered unusable was 71.9%. The tenants feel that the landlord has materially breached their agreement and that the tenancy was no longer valid. The tenants stated that the landlord had taken far too long to make a decision as

to what type of flooring she would install and whether she would upgrade the flooring in the bedrooms as well. The tenants stated that they had made all reasonable efforts to work with the landlord but the landlord was “dragging her heels”.

The landlord gave the following testimony:

The landlord stated that the leak was a very difficult one to locate. The strata often referred to it as a “phantom leak”. The landlord stated that when it was eventually located it became an insurance claim that involved four units, the insurance company, four separate owners, the strata, on site managers, contractors, and property managers. The landlord stated that she shared the tenants’ frustration and felt they were entitled to some compensation but not to the level they were seeking. The landlord stated that she had forwarded her concerns and frustrations to the strata but to no avail. The landlord stated that she offered alternative accommodations and a monetary amount as compensation which were refused. The landlord stated that she had acted in accordance with the Act and that she was taking all the necessary steps and precautions as required. The landlord stated that she was “shocked” when the tenants stated that they would be moving. The landlord was hopeful to resolve the matter outside of the Branch.

Analysis

Both parties provided extensive documentary evidence. All parties’ testimonies and evidence have been considered in making a decision. As this matter was conducted over two separate days and almost 2.5 hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in each party’s application.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I address the landlord's claims and my findings around each as follows.

Landlords First Claim - The landlord is seeking the loss of revenue for the month of February in the amount of \$1650.00. The tenants acknowledge that they vacated the unit on January 14, 2013. The tenants felt that the landlord had breached their tenancy agreement by not providing a clean, safe and properly decorated living space and that they were justified in vacating the premises. The landlord stated that she had acted in accordance with the Act and that the tenants were advised along the entire process. The landlord made attempts to minimize the tenants inconvenience by offering her own personal home in the city and to schedule according to the tenants preference. I am satisfied that a material breach did not occur and that the tenants did not provide proper notice that they would be moving out. I find that the landlord is entitled to \$1650.00.

Landlords Second Claim – The landlord is seeking \$745.00 for loss of revenue for March 1-15, 2013. The landlord stated that she advertised on the internet, however that was the extent of her testimony in regards to mitigating her loss. The landlord stated that she did not live in the jurisdiction and provided no further testimony in regards to mitigating her losses. The landlord has not provided sufficient evidence to support this claim and accordingly I dismiss this portion of her application.

Landlords Third Claim- The landlord is also seeking \$924.00 for the rental agent fee. The landlord stated that the agent posted ads on a free website. The landlord stated that the rental agent was going to give testimony for this hearing. The hearing was conducted over two separate days and the rental agent did not participate on either occasion. The landlord had ample opportunity to have this witness give evidence. The landlord did not provide sufficient evidence as to what specific roles or duties the agent undertook to justify this cost and accordingly I dismiss this portion of their application.

I address the tenants' claims and my findings around each as follows.

Tenants First Claim – The tenants are seeking compensation for the loss of use for a portion of their apartment. The tenants seek \$1188.00 X 3 months of loss of use for an amount of \$3564.00.

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 tenants feel they had lost 72% of their floor space and should be entitled to the reimbursement of the rent commensurate to that amount. The landlord adamantly disputed that amount. The landlord stated that the actual lost amount of living space was “8.5%”. Based on the testimony and evidence of both parties I accept the tenants were inconvenienced but not to the severity as alleged or to the extent a material breach occurred. I find that the tenants are entitled to compensation in the amount of \$250.00 X 3 months for a total of \$750.00.

Tenants Second Claim – The tenants are seeking the return of the \$50.00 key deposit that was posted upon move in. The landlord does not dispute this claim. I find that the tenants are entitled to \$50.00.

In summary the landlord has been granted a monetary amount of \$1650.00. The tenants have been granted a total monetary amount of \$800.00.

By “offsetting the costs” ($\$1650.00 - \$800.00 = \$850.00$) the landlord is entitled to a monetary order of \$850.00.

The landlord has established a claim for \$850.00. I order that the landlord retain the \$825.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$25.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As neither party has been completely successful in their application I order that both parties bear the cost of their filing fee.

Conclusion

The landlord is entitled to a monetary order in the amount of \$25.00.

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 11, 2013



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca