



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord's evidence submission was not before me; the landlord stated that he was not concerned and would proceed with oral submissions.

The tenant supplied a CD that contained an audio recording. The landlord had not heard the recording and the tenant did not confirm that the landlord had been able to access that evidence at least 5 days prior to the hearing; as required by the Rules of Procedure. Therefore, that evidence was set aside and the tenant was able to provide a verbal description of the content of the CD.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$543.00 as damage or loss under the Act?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced in February 2012; a copy of the tenancy agreement was supplied as evidence. Rent is \$1,295.31 per month. At the start of the tenancy the landlord provided the tenants with a copy of an information sheet that indicated the water shut off valve was in the garage; this was submitted as evidence.

There was no dispute that on December 9, 2012, in the middle of the day, a flood occurred from the sprinkler system in the ceiling of an upper floor bedroom. The tenants could not locate the water shut off valve and it was 45 minutes before the landlord's agent could attend at the unit and locate the shut off valve which was under the kitchen sink.

The parties agreed that for the next thirteen days the tenants and their 2 children lived with family members while an extensive rehabilitation of the unit was completed. The tenants were able to move back into the unit on December 22, 2012. The tenant agreed that the landlord went to great effort to have the work completed before Christmas.

The landlord provided the tenants with compensation in the sum of \$255.00, a copy of the invoice of payment showed that \$55.00 was for the loss of household items and that \$200.00 was for hydro costs and miscellaneous expenses. The tenant said that this payment was not for any miscellaneous expenses but for hydro usage only during the time work was completed in the unit.

The tenants are claiming a loss of use in the sum of \$543.00 for the thirteen days they were not able to live in the unit. The tenant said that the landlord was negligent as the information on the sheet given at the start of the tenancy incorrectly identified the location of the water shut-off valve. The delay in shutting off the water resulted in extensive damage from water flowing into the home until the landlord's agent could arrive.

The parties disputed whether alternate accommodation was offered to the tenant; the landlord said it had been; the tenant said it had not. The tenants did not expect the landlord to pay their accommodation costs but believed they were entitled to compensation as they could not live in the home for which they had paid rent.

Analysis

Residential Tenancy policy suggests that even when a landlord has not been negligent a tenant may be entitled to compensation for damage or loss. Policy also suggests that when losses are very unexpected costs are normally not recoverable. Taking into account policy, which I find takes a reasonable stance; I find that the tenants did suffer a loss, but that there is a limit to that loss.

I find that there was no negligence on the part of the landlord; this flood was sudden and unexpected. Even though the notice given that identified the location of the water shot-off valve was incorrect, I find that this was an inadvertent error and does not constitute negligence on the part of the landlord.

The tenants contracted with the landlord for the provision of a rental unit which both parties agreed became unsuitable for occupation for a period of thirteen days. The tenant's did not move all of their belongings from the home; only those items that they needed while construction took place. Therefore, I find that the use of the rental unit was rendered to that equivalent of a storage locker with a value of what I find to be a reasonable sum of \$100.00 during the thirteen day period of construction.

Therefore, as the tenants were unable to use the rental unit for anything more than storage I find that they are entitled to compensation in the sum of \$543.00 for the thirteen days; less \$100.00 for the storage value of the unit during that time. If the tenants had been required to remove their belongings; as the landlord was not at fault, the tenants could have relied upon insurance for any storage costs.

I find that the tenant's application has merit and that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Therefore, the tenants may make a one-time deduction from next month's rent owed, in the sum of \$493.00.

I find that the balance of the claim is dismissed.

Conclusion

The tenants are entitled to compensation in the sum of \$443.00.

The tenants are entitled to filing fee costs.

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 19, 2013

Residential Tenancy Branch

