



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXECUTIVE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, O

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations or tenancy agreement, for the recovery of the filing fee for this proceeding and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 22, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Does the Tenant have a loss or damage and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. What other considerations are there?

Background and Evidence

This tenancy started in February 1, 2011 as a month to month tenancy. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 at the start of the tenancy and a pet deposit of \$700.00 in September, 2012.

The Tenant said there was a flood in the basement of the rental unit on June 18, 2013. The Tenant said she phoned the Landlord a number of times and he did not answer so she left a message informing the Landlord of the flood situation. The Tenant continued to say that when the Landlord did not phone back she called a plumber who said it was late at night and the cost to do the repairs after hours would be very high, so the plumber suggested the Tenant could run the pump manually over night and then he could repair the pump during regular hours at a more reasonable cost. The Tenant said she manually operated the pump over night to save the Landlord the high cost of

overtime repairs. The Tenant said the Landlord finally returned her call and the Landlord sent a plumber to the rental unit to repair the pump. The Landlord said the repairs were completed on Thursday, June 20, 2013.

As a result of the failed pump and resulting flooding the Tenant said she lost the use of the basement in the rental unit from the end of June, 2013 to the end of October, 2013 when they moved out of the unit. The Tenant said the basement had a bedroom that her son occupied, a REC/TV room for her children, a bathroom and a storage room. The Tenant said because of the flood and water damage they could no longer use the basement because of the water damage and smell. The Tenant said she thought the basement made up approximately ½ of the square footage in the house. The Tenant continued to say the Landlord called a restoration company who came on August 26, 2013 two months after the flood, to take samples and assess the damage to the unit. The Tenant said the restoration company did not come back to repair the damage until the end of October, 2013. By this time the Tenant said they had decided to move out of the unit because with the loss of the basement in the rental unit, the unit no longer met their needs.

The Landlord said the Tenant caused delays in getting the restoration company into the unit, because the Tenant denied the restoration company access to the rental unit. The Tenant said she did not want the company entering the unit unaccompanied and because she was at work and the Landlord was not accompanying the restoration company into the unit she requested the company to reschedule to a time when she was at home.

The Landlord continued to say that there were additional delays in getting the repairs completed because of confusion between the Owner and the Tenant. The Owner said the Tenant was responsible to remove and store her belongings so that the work could be completed and the Tenant requested rent compensation for the loss of use of the basement. The Tenant said that the Landlord offered \$350.00 of rent reduction for October and November, 2013, but nothing for June, July, August and September, 2013. The Tenant said as a result of this disagreement the repair work was not started until the end of October, 2013.

The Landlord said in closing that he responded in good time after they knew about the flood and the pump was repaired in 48 hours after he got the Tenant's message. As well the Landlord said there were delays in the repair work because of confusion and disagreements between the Owner and the Tenant. The Landlord said the Owner made a compensation offer to the Tenant. The Landlord said the Tenant declined the offer and the Tenant delayed the repair work; therefore the Tenant has to have some responsibility for the work not being completed.

The Tenant said in closing she called the Landlord and he did not respond to the emergency, so she had to call a plumber and she handled the pump problem until a plumber came. The Tenant continued to say she may have delay the restoration work by rescheduling, but she did not want people in her house unsupervised and the

Landlord was not going to accompany the restoration company to the rental unit so she asked the company to reschedule. As well the Tenant said the Owner offered her \$350.00 for October and November, 2013, but nothing for June, July, August and September which were the months that she lost the use of the basement, so she declined the Owners offer. The Tenant said she believes her claim is fair at \$400.00 for each month of July, August, September and October, 2013 and is reasonable as she only had use of ½ the rental property.

Analysis

It appears from the testimony of both parties an emergency water/flood situation happened on June 18/19, 2013 in the rental unit and the pump was repaired by June 20, 2013. The Tenant said the Landlord was not available that night and she had to handle the emergency herself. The Tenant said she called the Landlord that night and left messages and as a result of the Landlord not responding she called a plumber. The Landlord said he called a plumber as soon as he was aware of the situation the next morning. I accept the Landlord's testimony that he acted responsible after he heard his messages the day following the night the Tenant phoned the emergency repair in. Section 32 of the Act says the Landlord must post or give the Tenant a phone number for emergency repairs. It appears from the Tenant's testimony the Landlord did give her the phone number of the rental office which I find is not sufficient for emergency repairs as no one is available to answer the phone during the night. As a result I find the Landlord did respond in a reasonable way, but the Landlord failed to provide the Tenant with an effective emergency number.

Further Sections 32 and 33 of the Act say that a Landlord must make emergency repairs and maintain a rental unit to health, safety and housing standards. I accept the Tenants testimony that the flood happened June 18, 2013 and the repairs were not completed until after October 31, 2013. I find that four months is not an acceptable time period to complete repairs to this rental unit for the damage that was caused by this water issue or flood. Further I do not accept the Landlord's statements that the Tenant delayed the restoration work because the Tenant denied the company access to the unit. I accept the Tenant's testimony that if the Landlord would have accompanied the restoration company into the unit she would have granted access. It is not unreasonable to require supervision of workers in one's home if you do not know the workers. I find it was the Landlord's responsibility to organize and monitor the restoration work in the rental unit; therefore any delays in the restoration work were the responsibility of the Landlord.

Further I find that the loss of use of the basement is a substantial change in the tenancy. Although the basement is ½ the square footage of the house, the rooms in the basement are not primary rooms of the rental unit; therefore the basement's value to the tenancy is not as much as the main floor with the kitchen and living rooms. I accept the Tenant's testimony that they lost the use of the basement because of water damage and smell from the time of the flood June 18, 2013 to when they moved out in October, 2013 is a really loss in the tenancy. This is confirmed by the Owner's offer to compensate the Tenant for the loss of use of the basement in the amount of \$350.00 for two months.

As a result, I find the Landlord is responsible for the delays in the repairs to the basement and I find the Tenant lost the use of the basement for over 4 months. As the basement is of less value to the tenancy than the main floor I concur with the Tenants request for \$400.00 for each month that the Tenant lost the use of the basement. Consequently I find for the Tenant and award the Tenant \$400.00 for each month of July, August, September and October, 2013 in the amount of \$1,600.00.

As the Tenant has been successful in this matter, I order the Tenant to recover the filing fee of \$50.00 from the Landlord.

Conclusion

A Monetary Order in the amount of \$1,650.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 21, 2014

Residential Tenancy Branch