



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

The tenant provided affirmed testimony that on January 9, 2014 he personally served the landlord's boyfriend, at the rental unit with the hearing documents and evidence. Service occurred in the late afternoon. Earlier in the day the tenant had gone upstairs to the landlord's unit; she was not in but later sent the tenant a text asking what he had wanted. It was after the tenant had gone upstairs that the landlord's boyfriend came to the tenant's unit. The tenant read from a subsequent text message that the landlord then sent him. The text indicated the landlord was aware of the "court papers that are written to me."

The tenant sent a text message in response, advising the landlord to contact a Service BC office or the Residential Tenancy Branch for advice on the upcoming hearing. He told the landlord she had a lot of time to prepare as the hearing was in April.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Therefore, as the landlord acknowledged her awareness of the documents that had just been given to her boyfriend, by the tenant, I find that the landlord has been sufficiently served with Notice of this hearing and the evidence. The landlord did not attend the hearing.

Preliminary Matters

The 2nd applicant named is the sixteen year old daughter of the tenant.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$375.00 for the loss of use of the rental unit as the result of a flood?

Background and Evidence

The tenancy commenced in July 2013; the tenant does not recall receiving a tenancy agreement.

Rent is \$750.00, due on the 1st day of each month. A security and pet deposit were paid.

The tenancy has continued; the tenant was recently given a 2 month Notice to end tenancy for landlord's use.

On December 8, 2013 the tenant reported a flood to the landlord. Water came into the living room area of his unit. It was determined that a sewer line had been damaged and that the water was in fact a Class A biohazard.

The tenant quickly removed his belongings from the living room and a storage area that had been provided for his use several months after the tenancy commenced. The landlord's boyfriend helped the tenant move several boxes.

The tenant provided photographs of the state of the unit after the flood occurred. The photos show his belongings piled in storage boxes; the furniture had been moved and the unit is in a state of disarray. The tenant provided a drawing of the unit rooms; the photographs were marked, to coincide with the area of the unit shown on the drawing. The tenant had to move through the unit in very narrow passages between furniture and piles of his belongings for over a 1 month period of time.

The day after the flood the landlord gave the tenant a \$100.00 gift card as an apology for the flood. No other assistance was offered to the tenant.

The sewage soaked carpet was removed 3 days after the flood. The tenant said the flood caused a terrible smell in the unit. Approximately 2 weeks after the water was vacuumed from the unit and the flooded area was cleaned and dried with fans.

The tenant remained in the unit throughout the time repairs were made and had to use his bedroom as living space. The tenant did not ask to be moved to a hotel as he thought the repairs would be completed much more quickly than they were. The tenant asked the landlord if he could withhold January 2014 rent as compensation for the loss of use of the unit; the landlord denied this request as she could not afford to lose rent revenue.

Later the landlord said she could have stored the tenant's belongings; but she had not offered to do this during the time the repairs were on-going.

On January 8, 2014 the tenant applied requesting compensation; the repairs were fully completed on January 12, 2014.

The tenant said this was a long, drawn out process of repair and that he had not wanted to request compensation. However, the tenant believes the landlord has been compensated by their insurance company and that the inconvenience he suffered should also be compensated by the landlord.

The tenant believes that the leak may have been caused by something the City did and that it was related to a sewage cap that was in an area the landlord converted to parking.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 32 of the Act provides, in part:

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.

There was no evidence before me as to what caused the leak to occur; the tenant did not have any definitive information. However, the landlord was at liberty to attend the hearing and make submissions in relation to the cause of the flood and the length of time it took to complete repairs.

No matter the cause of the flood, section 32 of the Act requires the landlord to make repairs. Clearly the presence of sewage water would pose a health hazard. There was no evidence that the landlord took any steps to assist the tenant with moving his property, no effort to offer alternative living arrangements were made and no offer of storage of the tenant's belongings was made. The tenant was left to live in a unit that had been flooded by sewage, with what I find to be a token offer of compensation; \$100.00.

I find that a period of just over 1 month to make this repair was not reasonable; particularly as the tenant was left in the unit to cope with the lack of space, the discomfort and potential hazard posed by a sewer flood. If the tenant had requested a hotel or other accommodation it is very likely the amount of compensation would exceed the sum he has claimed. Therefore, I find that by remaining in the rental unit the tenant more than mitigated the loss he has claimed. He had paid December rent and then paid January rent, even though the use of the unit and the quality of the environment were affected for at least 34 days during this time.

Therefore, I find that the tenant is entitled to compensation in the sum of \$375.00 as a result of the loss suffered. I find that the repairs were not completed in a reasonable period of time; given the absence of any attempt to provide the tenant alternate accommodation and storage of his belongings during that time.

I calculated the loss to represent at least sixty percent of the value of the rental unit for each day; a sum that exceeds that claimed by the tenant and the \$100.00 provided by the landlord. Therefore, I find the tenant's claim more than reasonable.

Therefore, pursuant to section 65 of the Act, I find that the tenant may deduct \$375.00 from May 2014 rent due to the landlord. In the case that May rent has been paid in full I have also issued the tenant a monetary Order in the sum of \$375.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. The monetary Order will not be enforceable should the tenant deduct the \$375.00 from May rent owed.

Conclusion

The tenant is entitled to compensation in the sum of \$375.00 which may be deducted from May 2014 rent. If the tenant has already paid May 2014 rent in full he may enforce a monetary Order issued in the sum of \$375.00.

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: April 17, 2014

Residential Tenancy Branch

