



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's application for dispute resolution in which the tenants have requested \$1,000.00 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.

The initial hearing was held on March 25, 2014 and was adjourned to allow the landlord to attend. The hearing reconvened on June 12, 2014 with a different agent present.

The tenants were reminded they continued to provide affirmed testimony. The agent and witness were each affirmed.

A determination was made at the March 25, 2014 in relation to the tenant's evidence submission. It was not given to the landlord so has been set aside.

The tenants did not receive the landlord's 2 page evidence submission and the agent had no information in relation to service of that evidence which was then set aside.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$1,000.00 as damage or loss under the Act?

Background and Evidence

The tenancy commenced in September 2012, rent in the sum of \$1,895.00, due on the 1st day of each month.

There was no dispute that on July 9, 2013 a pipe burst in the kitchen. The tenant is a plumber and was able to turn the complex water off, make the repair and restore water service. There was also no dispute that when repair of the water damage commenced asbestos was located in the drywall.

The tenants were asked to vacate while repairs were completed; which they did on July 22, 2013.

The tenants found a note on August 4, 2013, indicating they could move back into the unit; which they did on August 5, 2013.

The tenants explored using their insurance to cover a hotel and meals, but they decided to stay with family and did not need to make an insurance claim. The tenants did not even consider submitting a claim for rent that had been paid to the landlord.

The tenants said the landlord had initially said rent paid would be returned, to cover those days the tenants were out of the unit. The relationship "soured" and compensation was not provided.

The landlord's witness had no knowledge of the matters related to the flood, other than he was present when the initial repair was being made to the pipe.

The landlord said that they believed the tenant's insurance would have covered the cost of rent paid. I pointed out that the landlord has received rent for a portion of a month where the tenants could not live in the unit. The landlord did not dispute that if the tenants had made a claim, their insurer, if they even covered that type of loss, would likely then sue the landlord to recover the cost, as the landlord had benefitted.

The tenants have asked to have a pro-rated sum of compensation for each day they were not in the unit. They claimed \$1,000.00.

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. There was no dispute that the flood occurred and that the tenants were required to vacate the unit.

Residential Tenancy Branch (RTB) policy suggests that the purpose of a claim for damages is to put the person who suffered the loss in the same position as if the contract had been carried out. In this case the tenants contracted with the landlord for the rental of the unit. The unit then became temporarily uninhabitable. There was no negligence alleged, but the tenants had paid rent to the landlord, for use of a rental unit that was then not made available to the tenants.

The tenants complied with the request that they vacate and returned to the unit as soon as they found the note from the landlord. There was no evidence before me that the landlord made any other effort to inform the tenants they could return to the unit.

RTB policy suggests that if the tenant is deprived of the use of all or part of the rental unit, through no fault of their own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Therefore, even if the tenants had been able to claim the rent paid via their insurance company I find it is reasonable to expect the landlord would then have been liable for funds accepted, for a service not provided.

I find that the tenants mitigated the loss claimed; they lived with family and chose to only request return of rent paid. I find the tenants have taken a reasonable stance and that policy would suggest they should be compensated for the rent paid during those days they could not reside in the rental unit.

Therefore, I find, pursuant to sections 65 and 67 of the Act, that the tenants are entitled to compensation for fourteen days (July 22 to August 4, 2013 inclusive) in the sum of \$62.30 for each day they could not reside in the rental unit ($\$62.30 \times 14 = \872.20 .) The balance of the claim is dismissed.

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.

Based on these determinations I grant the tenants a monetary Order in the sum of \$922.20. 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 tenants are at liberty to deduct \$922.20 from the next month's rent due; in satisfaction of the claim. If this occurs the monetary Order will no longer be enforceable.

Conclusion

The tenants are entitled to compensation in the sum of \$872.20; the balance of the claim is dismissed.

The tenants are entitled to the filing fee costs.

The monetary Order may be enforced, or the compensation may be deducted from the next month's rent due.

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 12, 2014

Residential Tenancy Branch

