



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall St. Holding
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes:

MNR; MNDC; OLC; RR

Introduction

This is the Tenant's application, filed January 15, 2014, for the cost of emergency repairs; compensation for damage or loss under the Act, Regulation or tenancy agreement; and an Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

On February 21, 2014, the Tenant amended his application to include a request for an Order that the Landlord comply with the Act, Regulation or tenancy agreement.

This matter was originally heard on May 1, 2014, and a Decision rendered. On May 8, 2014, the Landlord filed an Application for Review Consideration, which was granted.

The Review Hearing took place on July 29, 2014. On August 21, 2014, and September 17, 2014, Interim Decisions on the Review Hearing were rendered, which should be read in conjunction with this Decision. The matter was adjourned to November 12, 2014.

The Landlord did not sign into the Hearing on November 12, 2014, although the Hearing remained open for 20 minutes. The Residential Tenancy Branch sent out Notices of the reconvened Hearing to both parties on September 19, 2014. The Landlord's copy of the Notice was sent to the Landlord's address for service. I am satisfied that the Landlord received notice of the reconvened Hearing, which was deemed to be received on September 24, 2014, pursuant to the provisions of Section 90 of the Act.

The Hearing continued in the Landlord's absence.

Preliminary Matters

At the outset of the Hearing on November 12, 2014, the Tenant testified that the tenancy has ended. Therefore, his request for an Order that the Landlord comply with the Act, Regulation or tenancy agreement and a rent reduction are dismissed.

The Hearing continued with respect to the Tenant's request for the cost of emergency repairs and for compensation for damage or loss under the Act, regulation or tenancy agreement.

Issues to be Determined

- Is the Tenant entitled to a monetary award for the cost of emergency repairs?
- Is the Tenant entitled to compensation for damage or loss under the Act, Regulation or tenancy agreement?

Background and Evidence

The Tenant gave the following affirmed testimony:

- This tenancy began on July 1, 2012. Monthly rent was \$800.00, due on the first day of each month.
- The toilet was leaking for more than two years and there was a problem with the plumbing in the bathroom, causing sewage to back up through his shower and bathtub every three days or so. The Tenant told the Landlord about this issue on July 29, 2012, December 24, 2013 and January 3 or 4, 2014, but the Landlord did nothing. The Tenant got tired of waiting and fixed the toilet himself. The Tenant paid \$291.90 in cash for the repairs. The Tenant also put an electric heater in the bathroom to help dry out the floor and that he hydro bill increased from \$145.00 every two months, to \$226.18. The Tenant has spent hours bleaching the floor, and cleaning up feces from his floor and tub.
- The Tenant had to make use of the showers at a local recreation facility and often used the toilet at a restaurant across the road from the rental unit. The Tenant seeks compensation for loss of use of the bathroom.
- The Tenant's total claim is \$405.32.

Analysis

This is the Tenant's Application for Dispute Resolution and therefore the onus is on the Tenant to provide sufficient evidence to prove his claim, on the balance of probabilities.

Is the Tenant entitled to a monetary award for the cost of emergency repairs?

Section 33(3) of the Act provides that a tenant may make emergency repairs only when all of the following conditions are met:

- a) Emergency repairs are needed;

- b) The tenant has made at least 2 attempts to telephone the landlord for emergency repairs;
- c) Following those attempts, the tenancy has given the landlord reasonable time to make the repairs.

Section 33(5) of the Act provides that a landlord must reimburse the tenant for amounts paid for emergency repairs if the tenant:

- a) Claims reimbursement from the landlord; and
- b) Gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33 (6) of the Act provides that subsection (5) does not apply if the tenant made the repairs before one or more of the conditions in subsection (3) were met, or the tenant has not provided the account and receipts for the repairs as required under subsection (5).

In this case, I find that the Tenant has not provided sufficient evidence that he complied with Section 33(3)(b) and (c) and Section 33(5)(b) of the Act. Therefore I find that he is not entitled to recover the cost of emergency repairs from the Landlord.

Is the Tenant entitled to compensation for damage or loss under the Act, Regulation or tenancy agreement?

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, Regulation or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law.

Based on the undisputed, affirmed testimony of the Tenant, and the photographs and other documentary evidence provided by the Tenant, I find that the Landlord did not comply with Section 32(1) of the Act and that the value of the tenancy was diminished because of loss of use of the bathroom for an extended period of time as a result of the Landlord's breach.

Therefore, I allow the Tenant's claim in the amount of **\$405.32**, which is the total amount that the Tenant has claimed on his Application for Dispute Resolution.

Conclusion

The Tenant is hereby provided with a Monetary Order in the amount of **\$405.32** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: December 08, 2014

Residential Tenancy Branch

