



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on each of the respondents by mailing, by registered mail to where they reside. GM acknowledged receipt of the documents on his own behalf. He also testified that SM received them as he witnessed the documents in her possession.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided the tenancy would begin on July 15, 2014. However, the tenants were not able to move in until early August. The rent was \$1250 per month payable in advance on the first day of each

month. The tenants paid a security deposit of \$625 and a pet damage deposit of \$150 at the start of the tenancy for a total of \$775.

The tenants testified they recognized the presence of a rat/mice problem when they moved into the rental unit. SM testified he noticed poison packets and traps on the exterior of the home. Further, there was a considerable amount of overgrowth which can facilitate such a problem. He testified he had a lengthy telephone conversation with SLM where he expressed his concerns about the rat/mice problem. SLM told him they should get a cat. Over time the problem got worse as the mice/rats began to move from the outside to the basement and attic. SLM's adult daughter was contacted but she told them it wasn't a big deal. Initially the tenant thought it was a mice problem. The landlord told them they should set mice traps. The tenants attempted to do so but it was not successful. Again the tenants asked that the landlord hire a professional exterminator. The landlord refused.

On January 5, 2015 the tenants woke up to discover the rats had chewed a water line leading to a leak. They immediately contacted the landlord SLM. She told them the name of a plumber to contact. She also said the other landlord GM would be down in a couple of days to look at the problem.

On January 5, 2015 the tenants e-mailed SLM advising her the inspector was here today and advised them that it was so unsafe for their children that they should move out today. The e-mail requests that SLM's daughter remove belongings from the crawl space and that an exterminator needs to be hired. SLM responded to that e-mail stating they talked to an exterminator and that it would be best if the other landlord GC set traps and reset them.

On January 6, 2015 the tenants e-mailed the landlord saying the initial inspection for a professional exterminator would cost \$180 with a follow up visit of \$90.

The tenants later e-mailed the landlord saying they failed to appreciate the magnitude of the problem. The letter states: "We have no choice but to move out at this point. Living here is a health hazard and we have children to think about. " SLM responded saying they would accept the notice to vacate.

The tenants vacated the rental unit on or about January 15, 2015. The tenants provided the landlord with their forwarding address in writing on January 19, 2015.

Analysis

GM appeared at the hearing. He raised the following submissions:

- At the material time he was and continues to be separated from SLM and was not aware she had rented the rental unit. He further stated that SLM and her daughter at no time acted as agents for him.
- The tenants failed to provide notice in writing of the rat/infestation problem until it was too late.
- The tenants were aware of the rat problem when they took possession.

I determined that GM is a co-owner of the rental property and as such he fits the definition of landlord found in the Residential Tenancy Act. He is jointly and severally liable with the other co-owner. Further, section 32 of the Act imposes obligations with respect the duties of a landlord to repair and maintain the property and provides as follows:

Landlord and tenant obligations to repair and maintain

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.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

These obligations continue even where the tenant is aware of the landlord's breach at the start of the tenancy. The landlords had an obligation to deal with the rat infestation even if the tenants' were aware of the problem at the start of the tenancy. Finally, I determined the tenants gave the landlord notice of the problem commencing with the start of the tenancy. While it is preferable that the tenants put the notice in writing, the failure to do so does not prevent the tenants from bringing a claim.

With respect to each of the tenants' claims I find as follows:

- a. The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The tenants paid a security deposit of \$625 and a pet damage deposit of \$150 on July 4, 2014 for a total of \$775. I determined the tenancy ended on January 15, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on January 19, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I

determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1550.

- b. The tenants claim for reimbursement of the rent for January and moving costs. The tenants paid the rent for January when due on the first of January. The tenants subsequently gave the landlord written notice that the presence of the rat infestation created a serious health hazard to their family. In effect the tenants are alleging the negligence of the landlord in failing to deal with the rat infestation amounted to a breached a material term of the tenancy giving them the right to end the tenancy under section 45(3) which provides as follows:

“Tenant's notice

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.”

I am prepared to accept the submission of the tenants that the negligence of the landlord in dealing with the rat infestation amounts to the failure to comply with section 32(1) of the Act and amounts to a failure to comply with a material term. However, the tenants failed to give the landlord a reasonable period of time to correct the situation after giving the landlord written notice. The first form of written notice was given the by tenants on January 5, 2015. The landlord responded stating GM would be attending. The tenants advised the landlord on January 6, 2015 they were intending to vacate the rental unit. The landlord accepted the tenant's notice that date. I determined the tenants failed to give the landlord a reasonable time to correct the situation. GM testified that he began setting traps

within a couple of days of January 6, 2015 and the problem had been corrected by January 15, 2015. The rental unit was advertised after that and re-rented with the new tenants who took possession around February 15, 2015.

As a result I dismissed the tenants' claims for reimbursement of ½ month rent, the cost of the U-Haul rental, reconnection fees for Shaw, Fortis BC and Hydro, the cost of breakfast, lunch and dinner on the date of moving date.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1550 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$1600.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: June 11, 2015

Residential Tenancy Branch

