



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were hand delivered to the Landlord's on-site manager on December 7, 2014.

The Landlord did not provide any documentary evidence.

Issues to be Decided

- Is the Tenant entitled to compensation as a result of a leak in the rental unit?

Background and Evidence

The tenancy agreement was a one year term lease which began on August 15, 2014. Monthly rent was \$1,400.00, due on the first day of each month. A security deposit in the amount of \$700.00 was paid at the beginning of the tenancy, and has been returned to the Tenant.

A Condition Inspection Report was completed at the beginning of the tenancy, a copy of which was provided in evidence by the Tenant.

On October 3, 2014, the parties signed a mutual agreement to end the tenancy effective October 31, 2014.

The Tenant gave the following testimony:

The Tenant stated that when she moved into the rental unit, she was told that there was a leak in the ceiling of the bathroom; however, she was also told that it would be a non-issue because it would be repaired. The Tenant stated that at the end of August the bathroom ceiling leaked through the fan and the repair was unsuccessful. She stated that on September 8, 21 and 26, 2014, she advised the Landlord that the leak was still occurring and that it had caused mould in the rental unit which was getting worse. The Tenant was concerned for her health and the health of her baby.

The Tenant stated that the Landlord sent repairmen after each of her complaints, but they were unable to fix the leak. The Tenant stated that it was a very challenging 2 ½ months because she had to clean up after the repairmen on each occasion, the mould was getting worse, and she had to use an umbrella when she used the toilet because water was dripping from the ceiling fan directly over the toilet and bathtub.

On September 26, 2014, the Tenant gave the Landlord written notice that the Landlord was in breach of a material term of the tenancy agreement and that she would be ending the tenancy pursuant to the provisions of Section 45(3) of the Act if the Landlord did not fix the leak by October 26, 2014.

The Tenant testified that on September 30, 2014, the leak was getting worse and the ceiling around the bathroom fan looked as if it might collapse.

The Tenant testified that she met the person who used to live in the rental unit, who told her that the leak had been an issue for years. The Tenant provided a written statement from the former occupant in evidence ("Document #3").

The Tenant seeks a monetary award in the total amount of \$4,000.00, for return of the rent paid during the tenancy and recovery of her moving costs.

The Tenant gave her new address during the Hearing.

The Landlord's agent SM gave the following testimony:

SM submitted that the Tenant was aware that there was a leak when she signed the lease and that the Landlord could not foresee that there would be a problem with fixing the leak. SM submitted that "the upstairs tenant was just as inconvenienced" as the Tenant and questioned why the Tenant moved in and signed a one year lease if she was concerned about the leak. SM stated that every time the Tenant complained, the Landlord sent a repairman and therefore the Landlord did its due diligence.

SM stated that the Landlord had to “tear apart the bathroom” above the rental unit after the Tenant moved out, in order to find the leak. SM testified that the cause for the leak was never found but that after the renovations, the leak stopped and has not come back since the new occupant moved in on November 1, 2014.

With respect to Document #3, SM stated that the former occupant’s leak occurred 4 years before he moved out. SM testified that the cause for the former occupant’s leak was identified as a leak in the roof flashing, and that the Landlord fixed it.

SM submitted that the Tenant refused to allow the repairmen in the rental unit on October 7 and October 22, 2014.

SM testified that the Tenant moved just across the street, and therefore her request for \$540.00 in moving costs was unwarranted.

SM stated that the Tenant filed her Application after she signed the mutual agreement to end tenancy, and therefore she should not be awarded damages because the parties had already agreed to end the tenancy, the security deposit had been returned, and no other relief was agreed upon.

The Tenant gave the following reply:

The Tenant stated that she was an “average person” and that she signed the mutual agreement to protect herself against the Landlord coming to her for loss of revenue.

The Tenant denied refusing access to the rental unit on October 7, 2014. She reiterated that the Landlord gained access without her knowledge or consent. The Tenant agreed that on October 22, 2014, she asked the Landlord not to send any more repairmen until after she had left.

Analysis

Based on the documentary evidence provided by the Tenant and the oral testimony of both parties, I find that the Tenant and the Landlord were both aware that there was a leak when they signed the tenancy agreement. I also find that the Landlord made reasonable attempts to fix the leak. However, I also find that the tenancy was devalued as a result of the leak.

With respect to the Tenant’s Document #3, the previous occupant writes:

My name is [PE] and I lived at [the rental unit] for approx.. 7 years. When I lived in the apartment there was a water leak and mold issue. The manager and

property management company were aware of the condition. I was finally moved into a new suite because they were unable to fix/repair the water leak/damager and mold.”

[reproduced as written]

PE was not available during the teleconference to be cross examined by the Landlord's agent. I find that PE's written testimony is vague. PE did not state when the leak took place, the location of the leak, or for how long the leak persisted before he was moved to a different suite. The onus is on the Tenant to provide sufficient evidence that the Landlord entered into the tenancy agreement with the Tenant, knowing that the leak was a long standing issue which could not be repaired. I find that the Tenant has not provided sufficient evidence to support this.

The Landlord does not dispute that water was leaking through the Tenant's bathroom ceiling. The e-mails and photographs provided by the Tenant show that mould was forming in the bathroom ceiling and in a storage room at the rental unit. I find that the tenancy was devalued 10% for the term of the tenancy. Therefore, I award the Tenant the sum of \$350.00 ($\$1,400.00 \times 2.5 \text{ months} \times 10\%$).

I dismiss the Tenant's application for recovery of the cost of moving.

Conclusion

The Tenant is hereby provided with a Monetary Order in the amount of **\$350.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims 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 02, 2015

Residential Tenancy Branch

