



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for the cost of emergency repairs to a unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the return of the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on January 26, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

At the start of the conference call the Tenant said the Landlord returned the security deposit at the end of January, 2015 so the Tenants said they are withdrawing the claim for the security deposit off the application.

Issues(s) to be Decided

1. Are there emergency repair costs and if so, how much?
2. Are the Tenants entitled to compensation for emergency repairs and if so how much?
3. Are there losses or damages to the Tenants and are the Tenants entitled to compensation?

Background and Evidence

This tenancy started on July 1, 2011 as a fixed term tenancy with an expiry date of June 30, 2012. Rent was \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 on July 1, 2011. The Tenant said they gave the Landlord written notice on December 17, 2014 that they were moving out of the rental unit on January 15, 2015. The Tenant said they physically moved out on January 6, 2015 but were not finished moving out of the unit until January 26, 2015.

The Tenants said the rental unit is an older unit and was in need of some repairs at the start of the tenancy but they worked on the rental unit and lived there for approximately three and a half years. The Tenant continued to say on December 11, 2014 the roof started leaking and they called the Landlord to repair it. The Landlord said they called a roofing company on December 11, 2014 and the roofers put a tarp on the roof to stop the leaking. The Tenants said the tarp did not stop the leaking and it blew off on a few days after the tarp was put up. The male Tenant said the tarp was secured with bricks and the bricks did not hold the tarp in place. The Tenants said they phoned the Landlord again. The Landlord said they phoned the roofer again and he came to the rental unit and repositioned the tarp. The Tenants said it did not stop the leaking so they gave the Landlord their notice to end the tenancy on December 17, 2014. The Tenants said the leaky roof caused mold to grow in the unit and affected their things and their health. The Tenants said they believed they had to make an emergency move for their health and safety.

As a result of the Tenants believing they had to move the Tenants said they have made the following application for compensation from the Landlord:

1. Return of the rent for $\frac{1}{2}$ of December, 2014 and for January, 2015 in a total amount of \$1,575.00.
2. The cost of the emergency move in the amount of \$500.00. The Tenants submitted receipts for the moving costs.
3. The filing fee for this application in the amount of \$50.00.

The Tenants said their total claim is \$2,125.00. The Tenants submitted 107 photographs to show the condition of the rental unit and the leaking roof. As well the Tenants submitted their own written statements and witness written statements as to the condition of the rental unit during the time they lived there.

The Landlord said that they acted promptly and responsibly when the Tenants told them there was a leak in the roof. The Landlords said they were told on December 11, 2014 about the leak and they had roofers at the unit putting a tarp the roof on December 11, 2014. Further the Landlord said when the tarp came off on December 17, 2014 they again had roofers at the unit repositioning the tarp on the roof on December 17, 2014. The Landlord continued to say they did not get any more complaints about the roof so they thought it was fixed. The Tenants said they called the Landlord on a number of occasions and did not get a call back because they did not have a direct line to the Property Manager/Landlord so they left messages with the secretary. The Tenant said the Landlord did phone on December 23, 2014 but the Tenant was at work and could not answer the phone until later. When the Tenant phoned back she said she did not get a call back from the Landlord. The Tenants said the roof leaked from December 11, 2014 to the day they moved out on January 26, 2015.

The female Landlord said she was in the unit on January 6, 15 and 26, 2015 and on the visit on January 15 she saw buckets on the floor to catch dripping water, but that day there was no water dripping. The male Tenant said it was not raining that day but the

buckets were there to catch the leaking water from the roof. The female Landlord said she did not know if the roof was leaking.

The Landlord said in closing that they acted responsibly and in a timely manner about the roof leaks so they believe the Tenants have no claim against them. The Landlord said a landlord can only respond to request from the tenants otherwise they don't know there is a problem. The Landlord said they responded to the requests of the Tenants in a timely manner. As well the Landlord said the Tenants chose to move out as their notice to end tenancy indicates; therefore the Landlord is not responsible for their moving costs. In fact the Landlord said the Tenants could have continued the tenancy as the roof was replaced. The Landlord said they are requesting the Tenants application be dismissed.

The Tenants said the Landlord has not repaired all the items that were listed on the move in condition inspection report and so they thought the roof would not be repaired as well. They told the Landlord the roof was leaking on a number of occasions between December 11, 2014 and January 6, 2015 the day they physically moved out. The Tenant said they did not want to move out as this was a community that they liked, but as the Landlord did not stop the roof leaking they believe the rental unit was not fit to live in so they moved out.

Analysis

Section 32 of the Act says: (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.

Rental units like any structure have wear and tear on them and need to be maintained to a reasonable standard to make them livable. When unfortunate events occur like roofs leaking both the tenant and the landlords are expected to work together to deal with the problems or issues. In this situation the Tenants contacted the Landlord on December 11, 2014 when the leak in the roof started and the Landlord responded with a repair crew on the same day. I believe both parties acted responsibly. Following this it appears that the repair crew did not complete the job to a standard that would stop the leak until the roof could be replaced. This is unfortunate but it happened and it is the

responsibility of the Landlord to do follow up and make sure a repair job fixes the problem or issue.

Both parties testified that the tarp blew off on December 17, 2014 and the Tenants testified that the roof continued to leak with the tarp on the roof. It is the Landlords responsibility to know their properties and to maintain a property to a liveable standard. I find the Landlord failed in their duty to maintain and repair the leak in the roof during the time period from December 11, 2014 to January 26, 2015 when the tenancy ended. As well I find the Tenant's moved out of the unit because of the leaky roof and the resulting effects of water leaking into the rental unit.

To answer the question of whether a rental unit is livable one indicator is whether tenants move out because of the problem or issue in the unit. In this case the tenancy has been in effect for three and a half years and the Tenants said they did not want to move but they felt they had to move. I accept the Tenants position that the unit was not maintained to a standard and the repairs were not effective enough to continue the tenancy. Therefore I find the Tenants have established grounds to show that the rental unit was not maintained to a level suitable to be occupied. Consequently I award the Tenants compensation from December 11, 2014 to January 6, 2015 in the amount of $\frac{1}{2}$ the daily rental as the Tenants did have use of the rental unit in the amount of \$1,050.00 / 31 days in December = \$33.87 / day X 20 days = \$677.42 / 2 (for use) = \$338.71 in compensation for December, 2014 and \$1,050.00/30 days in January = \$35.00/day x 6 days = \$210.00/2 (for use) = \$105.00 to January 6, 2015. Total award while the Tenants were living in the unit is \$338.71 + \$105.00 = \$443.71.

Further I find the Tenants lost the use of the rental unit in full after January 6, 2015 as they were not living in the unit because of the leaky roof; therefore I award the Tenants \$1,050.00 / 30 days in January = \$35.00 / day for 24 days = \$840.00. The total award for loss of use of the rental unit because of inadequate repairs and maintenance is \$443.71 + \$840.00 = \$1,283.71.

With respect to the Tenants claim for moving expenses tenants are responsible for their moving costs unless there is a circumstance beyond their control and a directive that forces a tenant out of a rental unit. In this case the Tenant says the leaky roof forced them out of the unit but the Tenants have not provided any evidence to show that they were forced to move by an order of directive. The Tenants chose to move out of the unit. Consequently I dismiss the Tenants claim for moving expenses.

As the Tenants have been partially successful in this matter, the Tenants are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenants will receive a monetary order for the balance owing as following:

Compensation for loss or damage	\$ 1,283.71
Recover filing fee	\$ 50.00
Subtotal:	\$1,333.71

Conclusion

A Monetary Order in the amount of \$1,333.71 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: July 28, 2015

Residential Tenancy Branch

