



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on January 19, 2015, seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by one Landlord and both Tenants. Each person gave affirmed testimony and the Landlord confirmed receipt of the application, hearing documents, and evidence served by the Tenants.

The application was filed listing two Landlords as respondents. A.W. appeared and affirmed that he was representing R.R.S. in his absence. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was the Tenants entered into a written fixed term tenancy agreement that began in approximately May or June 2006 which switched to a month to month tenancy agreement after one year. Rent of \$1,000.00 was due on or before the first of each month and in May or June 2006 the Tenants paid \$500.00 as the security deposit.

The Tenants testified that there was a fire in the adjacent rental unit which occurred in the early morning hours on October 31, 2014. They submitted that they were evacuated from the building and were later allowed into their rental unit for 5 minutes to gather some possessions as they would not be able to return to their rental unit for an unknown period of time.

The Tenants asserted that their rental unit suffered extensive smoke damage and was being treated with smoke scrubbers and chemicals. At one point they were told that the common firewall may have to be removed due to electrical damage and that the fire wall may contain asbestos. The Tenants submitted a time line of events between November 1, 2014 and November 16, 2014, where they were trying to obtain information regarding any health concerns with the chemicals being used, the safety information sheets on the products being used, if there was asbestos in their unit, so they could determine when they could return to their rental unit. The Tenants testified that when their questions were not being answered they sent the Landlord an email with a letter outlining their questions on November 18, 2014.

The Tenants stated that their Landlord told them their letter had been forwarded to the Landlord's insurance company for a response. The Tenants submitted that when they did not receive a response by November 29, 2014 they gave the Landlord notice that they would be vacating their rental unit as they needed a place to live. They moved out by December 10, 2014 and were given back their security deposit from the Landlord.

The Tenants have filed application for \$2,500.00 monetary compensation which includes the return of their November 2014 rent which was paid even though they were not able to reside in the rental unit for the entire month of November 2014; \$1,000.00 for the cost of temporary accommodations for November 2014; plus \$500.00 in moving costs.

The Tenant's had submitted documentary evidence in support of their application which included: a written statement; a Monetary Order Worksheet; a photograph of an

asbestos danger sign posted to an apartment door; and copies of sections 27, 28, 29, 50, 51, and 52 of the Act.

The Landlord testified that he could not dispute the time line of events submitted by the Tenants with respect to the fire and their requests for information. The Landlord submitted that both the remediation company and their insurance company told him that they could not discuss the situation with any of their tenants and that all other units, except the burn unit, were safe to be occupied during the remediation.

The Landlord confirmed that the Tenants rental unit suffered more smoke damage than other rental units as their unit had a false ceiling which trapped the smoke inside. He acknowledged that due to the additional smoke damage harsh smelling chemicals were used to treat their unit.

The Landlord submitted that he had held postdated cheques for the Tenants' rent payments. He stated that although the fire occurred on Friday October 31, 2014, he had already submitted the November 1, 2014 postdated cheques to the bank for deposit over the weekend.

In closing, the Tenants confirmed that they did not have tenant insurance. The Tenants confirmed they were not served a 2 Month Notice to end tenancy for landlord's use of the property even though they submitted copies of the Act which referenced compensation in relation to an eviction notice.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

In this case the undisputed evidence was that a fire occurred in the early morning hours on October 31, 2014, around 5:00 a.m. which caused the Tenants to be evacuated from the rental property. Due to ongoing remediation inside the Tenants' rental unit and a lack of safety information regarding the chemicals being used for that remediation the Tenants did not occupy the rental unit for the entire month of November 2014.

Based on the aforementioned I accept the Tenants submissions that they suffered a complete loss of quiet enjoyment of their rental unit, in breach of section 28 of the *Act*, for the entire month of November 2014. Accordingly, I grant the Tenants application for the return of their prepaid November 2014 rent in the amount of **\$1,000.00**.

Section 51(1) of the *Act* provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case the Tenants were not served a 2 Month Notice to end tenancy. Therefore, they are not entitled to compensation equal to one month's rent under section 51(1) of the *Act*. Furthermore, the Tenants did not have tenant insurance which may have compensated them for temporary accommodation and/or moving costs due to the fire in

the building. Therefore, by not having tenant insurance I find the Tenants have not done what was reasonable to mitigate their loss as required under section 7(2) of the Act. Accordingly, the claims for \$1,000.00 temporary accommodation and moving costs are dismissed, without leave to reapply.

The Tenants have been partially successful with their application; therefore I award partial recovery of their filing fee in the amount of **\$25.00**.

Conclusion

The Tenants have partially succeeded with their application and were awarded monetary compensation in the amount of \$1,025.00 (\$1,000.00 + \$25.00).

The Tenants have been issued a Monetary Order for **\$1,025.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the 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: July 09, 2015

Residential Tenancy Branch

