Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RP, RR, MNDC, MNSD

Introduction

This hearing concerns 2 separate applications filed by the tenants: the first was filed on November 10, 2015, while the second was filed on December 03, 2015. In their applications the tenants seek an order instructing the landlords to make repairs to the unit, site or property / a reduction in rent for repairs, services and facilities agreed upon but not provided / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and return of the security deposit.

A hearing was previously convened on January 27, 2016. By Interim Decision issued on that same date, the Arbitrator adjourned the hearing in order that both of the tenants' applications could be heard at the same time. Both parties attended this re-scheduled hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

It is understood that the unit which is the subject of this dispute is a 2 storey house. It is also understood that for an unknown period of time during the tenancy, the landlord resided in a separate unit located in the basement portion of the house.

Pursuant to a written tenancy agreement the month-to-month tenancy began on August 15, 2015. Monthly rent of $1,700.00 is due and payable in advance on the 15th day of each month, and a security deposit of $850.00 was collected. The tenancy agreement provides that while water is included in the rent, electricity and heat are not included. A move-in condition inspection report was not completed.

Following the tenants' contact with the local health authority, agents representing that authority inspected the unit on November 06, 2015. By letter dated November 09,

2015, the local health authority informed the landlord of certain actions that must be taken at the unit, in summary as follows:

- enclose the washer and dryer in a “room”
- contact a pest control company to service the house for silverfish
- provide weather stripping under the front door to seal off the large gap

In the letter, the local health authority instructed the landlord that the above actions must be addressed by November 30, 2015.

In November 2015 it appears that there were at least 2 occasions when there was limited flooding in the unit as a result of problems associated with the clothes washer. The landlord claims that flooding occurred when the tenants failed to follow his instructions not to use the clothes washer for a period of time while he undertook some miscellaneous re-wiring and / or re-plumbing at the unit. The tenants claim that certain deficiencies could have been easily remedied except for the landlord’s determination to undertake all repairs himself.

Subsequently, there was a sewage backup into the unit on January 10, 2016, which led to the tenants vacating the unit on January 11, 2016. It is understood that the backup occurred as a result of tree roots in the sewer line, and that a restoration firm was called in to assess the damage; that said, there is no official documentation before me in evidence (letterhead, for example) which reflects the involvement of any restoration firm in remediation or restoration. The tenants paid rent for the period from January 15 to February 15, 2016. However, in the absence of documented / authoritative assurances that the unit had been made suitable for occupation following the sewage backup, the tenants did not return to live in the unit after vacating on January 11, 2016.

By letter dated March 10, 2016, the tenants informed the landlord of their forwarding address for the purposes of repaying their security deposit. To date, the security deposit has not been returned, and neither has the landlord filed an application for dispute resolution. Arising from all of the foregoing, the tenants currently seek the repayment of their security deposit in addition to certain other compensation. In view of how events unfolded since the applications were originally filed, the tenants’ application for an order instructing the landlords to make repairs to the unit, site or property, and an application for a reduction in rent for repairs, services and facilities agreed upon but not provided, are now both effectively withdrawn.

Analysis

Based on the generally conflicting testimony of the parties, and the documentary evidence which includes, but is not limited to, undated text messages exchanged between the parties, photographs taken within and outside of the unit, pages of miscellaneous copied receipts for assorted food and clothing, 6 pages of the tenants' itemized bank account activity, and manually written / printed narrative, the various aspects of the tenants' application and my findings are set out below.

$1,700.00: *reimbursement of rent for the period January 15 to February 14, 2015*
$1,368.20: *($563.50 + $563.50 + $241.20) 16 days of temporary hotel accommodation*

Section 44 of the Act addresses **How a tenancy ends**, in part:

> 44(1) A tenancy ends only if one or more of the following applies:
>
> (e) the tenancy agreement is frustrated;

Residential Tenancy Policy Guideline # 34 speaks to "**Frustration**" in part:

> A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfilment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

I find that sewage backup into the unit on January 10, 2016 led to conditions which rendered the unit unfit for occupancy. The tenants vacated the unit on January 11, 2016, and there is no documentary evidence of the unit's having subsequently been made suitable for occupation. Accordingly, the tenants have not returned to live in the unit. In the result, I find that the tenancy contract was frustrated and the tenancy ended effective January 11, 2016.

I find that the landlord is entitled to retain rent up to the date the tenancy contract was frustrated, and that the tenants have established entitlement to reimbursement of rent paid after that date. Following from the above, I find that the tenants have established entitlement to reimbursement totalling **$1,864.52**, which is calculated as follows:

$164.52: *3 days' rent paid for January 12, 13, & 14, 2016*

$54.84: 1 day's rent ($1,700.00 ÷ 31)
$164.52: 3 day's rent (3 x $54.84)

$1,700.00: *rent paid for the period from January 15, 2016 to February 14, 2016*

I find that costs claimed by the tenants for temporary hotel accommodation are offset by the reimbursement of rent.

$850.00: *repayment of security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the security deposit.

As set out above, I find that the tenancy agreement was frustrated and that the tenancy effectively ended January 11, 2016. I find that the nature of text messages exchanged between the parties after this event reflects the common understanding between the parties that tenancy had effectively ended. Specifically, the tenants declined to move back into the unit until they had been given authoritative assurances that the unit had been made suitable for occupation following the sewage backup, and no such assurances were forthcoming from the landlord. Indeed, as earlier noted, there is no authoritative documentary evidence pertinent to the involvement of a restoration firm.

Thereafter, by letter dated March 10, 2015, the tenants informed the landlord of their forwarding address for the purposes of repaying their security deposit. However, the landlord subsequently neither repaid the security deposit, nor filed an application for dispute resolution. In the result, I find that the tenants have established entitlement to the double return of the security deposit in the total amount of **$1,700.00** (2 x $850.00).

$253.45: *Fortis (gas) & hydro*

In the absence of a complete record of related invoices, and in view of the conflicting testimony around whether a portion of this cost reflects use of these utilities by both parties at the unit, and / or whether a portion of this cost reflects use of these utilities by

the landlord in his permanent residence, I find on balance that the tenants have established entitlement limited to **$126.73**, or ½ the amount claimed.

$2,770.00: *loss / damages to property*
$1,037.29: *total of receipts "of expenses after evacuation"*

While I find that the tenants suffered a measure of loss, the documentary evidence in support of these aspects of the application is largely disordered and incomplete. In the result, I find that the tenants' have established entitlement to nominal compensation for general loss in the limited amount of **$500.00**.

$3,000.00: *baby sitter*
$202.00: *vehicle / gas expense from January 11 to February 1, 2016*

I find that the evidence before me insufficiently reflects a direct link between the costs claimed and the challenges encountered by the tenants following the sewage backup in the unit, which led to the end of tenancy. Accordingly, these aspects of the application are hereby dismissed.

$5,000.00: *aggravated damages*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

> 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.

Residential Tenancy Policy Guideline # 16 speaks to "Claims in Damages," in part:

> In addition to other damages an Arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.)

> Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

I find that the tenants have established entitlement to compensation for "non-pecuniary" losses in the limited amount of **$500.00**. This entitlement arises principally from the absence of any evidence that the landlord acted to restore the unit to a condition that "complies with the health, safety and housing standards required by law" after the sewage backup, and the landlord's failure to clearly apprise the tenants of his intentions and / or any progress made in restoration of the unit. In effect, the tenants were left in a state of limbo prior to the point in March 2016 when they finally sought the return of their security deposit. Secondarily, this entitlement arises out of the inconvenience and discomfort arising for the tenants as a result of deficiencies identified for remediation by the local health authority in November 2015.

Total entitlement: **$4,691.25** ($1,864.52 + $1,700.00 + $126.73 + $500.00 + $500.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$4,691.25**. This order must be served on the landlords. Should the landlords fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: March 30, 2016

Residential Tenancy Branch