Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Eco-World
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Tenant stated that on January 12, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on January 14, 2016 were served to the Landlord by courier. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 17, 2016 the Tenant submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that his evidence was faxed to the Landlord on August 17, 2016. This evidence was not available to me at the time of the hearing on August 18, 2016. The Agent for the Landlord stated that she has not received this evidence.

As the evidence submitted on August 17, 2016 was not submitted to the Residential Tenancy Branch or served to the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedures, it was not accepted as evidence for these proceedings. As the Tenant filed this Application for Dispute Resolution in January of 2016, I find that the Tenant had ample time to submit evidence and that adjourning the matter to provide the Landlord with time to receive/review this late evidence would result in a delay that is unfair to the Landlord.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit, a rent refund**,** and to costs associated to moving from the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the parties entered into a fixed term tenancy agreement, the fixed term of which began on November 01, 2015 and ended on October 31, 2016;
- the Tenant was permitted to occupy the rental unit a few days prior to the official start date of the tenancy;
- the Tenant agreed to pay monthly rent of $2,600.00;
- a security deposit of $1,300.00 was paid;
- a condition inspection report was completed at the start of the tenancy;
- the Tenant reported a leak in the roof on October 31, 2015;
- the Tenant reported a flood in the rental unit on November 13, 2015;
- on, or about, December 18, 2015 the Landlord received a copy of a letter from the Tenant that is dated December 18, 2015, a copy of which was submitted in evidence;
- the letter dated December 18, 2015 declares that the Tenant is ending the tenancy on December 22, 2015;
- the letter dated December 18, 2015 declares that the Tenant is ending the tenancy because the Landlord has failed to remedy the cause and effects of persistent water leaks and flooding;
- rent was paid for November and December of 2015;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant submitted an email to the Landlord from the Agent for the Tenant, dated November 16, 2015, in which the Agent for the Tenant informed the Landlord the Tenant wished to end the tenancy because the “house is not a standard living condition”. In the email the Agent for the Tenant declared that they did not live in the house because of the leaking roof and that the house is “smelly” since the flooding in the basement.

The Tenant submitted an email to the Tenant from the Agent for the Landlord, dated November 18, 2015, in which the Agent for the Landlord declared that the Landlord is attempting to resolve the problems.

The Tenant submitted an email to the Landlord from the Agent for the Tenant, dated November 24, 2015, in which the Agent for the Tenant informed the Landlord that the

smell in the house was very bad and that an insurance adjustor had informed him that repairs would take at least 6-8 weeks.

In regards to the leaking roof that was reported on October 31, 2015 Legal Counsel for the Tenant stated that on November 02, 2015 the Tenant was informed that a roofer will be sent to the rental unit and a roofer attended the rental unit a few days after November 02, 2015.

In regards to the leaking roof that was reported on October 31, 2015 the Agent for the Tenant stated that a few days after November 02, 2015 a roofer covered the roof with a tarp and no further leaks were detected after the roof was covered.

In regards to the leaking roof that was reported on October 31, 2015 the Agent for the Landlord stated that:

- a roofer attended the rental unit on November 01, 2016;
- the roofer covered the roof with a tarp;
- no further leaks were reported to the Landlord after the roof was covered;
- the roofer recommended that the roof not be repaired until the weather improves; and
- the roof has not yet been repaired.

In regards to the flood that was reported on November 13, 2015 Legal Counsel for the Tenant stated that:

- the leak appeared to be from an external source;
- the photographs submitted in evidence demonstrate the damage to the rental unit that occurred as a result of the flood; and
- the Tenant rented another home after the flood as she considered the rental unit to be uninhabitable.

In regards to the flood that was reported on November 13, 2015 the Agent for the Tenant stated that:

- approximately one week after the flood was reported the Landlord arranged to have the flooring and carpet removed from the lower level of the rental unit;
- approximately one week after the flood was reported the Landlord arranged to dry the areas impacted by the flood;
- after the flood there was a strong smell of mould throughout the rental unit;
- the smell of mould was so strong they could no longer live in the rental unit;
- the flooring and carpet was not replaced by the time the Tenant vacated the rental unit;
- the rental unit is a single family dwelling with two bedrooms upstairs and two bedrooms downstairs; and
- he was using a bedroom in the lower level of the rental unit prior to the flood on November 13, 2015.

In regards to the flood that was reported on November 13, 2015 the Agent for the Landlord stated that:

- she believes the flood may have occurred as a result of water seeping through the foundation after heavy rains;
- the Landlord arranged to have a contractor inspect the rental unit within two days of the initial report;
- it was subsequently determined that the damage to the rental unit would be covered by the Landlord's insurance;
- approximately one week after the flood was reported the flooring and carpet was removed from the lower level of the rental unit;
- approximately one week after the flood was reported the areas impacted by the flood were dried;
- she does not know when the flood damage was repaired, but it was sometime after the Tenant vacated the rental unit;
- the rental unit is a single family dwelling with two bedrooms upstairs and two bedrooms downstairs;
- she believes the Tenant could have continued to occupy the main floor of the rental unit until the lower level was repaired; and
- she never went to the rental unit after the flood so she does not know if it smelled of mould.

The Tenant is seeking to recover the rent paid for November and December as she was unable to occupy the rental unit after the flood on November 13, 2015.

The Agent for the Landlord stated that the Landlord left several messages for the Tenant in an attempt to schedule a time to jointly inspect the rental unit. The Agent for the Tenant stated that the Tenant did not receive any messages from the Landlord in which the Landlord attempted to schedule a time to jointly inspect the rental unit.

The Agent for the Landlord stated that the Landlord sent a Notice of Final Opportunity to Schedule a Condition Inspection to the Tenant, via email, on December 22, 2015. The Agent for the Tenant stated that a Notice of Final Opportunity to Schedule a Condition Inspection was not received by the Tenant. The Landlord did not submit a copy of the Notice of Final Opportunity to Schedule a Condition Inspection that was allegedly served to the Tenant.

Legal Counsel for the Tenant stated that a letter, dated December 17, 2015, was served to the Landlord. The Tenant did not submit a copy of this letter in evidence, however legal counsel stated that the letter informed the Landlord his law firm was acting on behalf of the Tenant; the letter requested that a settlement payment be forwarded to the law firm; and the letter provided an address for the law firm. Legal counsel argued that this letter served as a forwarding address for the purpose of returning the security deposit.

The Agent for the Landlord stated that on December 21, 2015 the Landlord received the letter from the Tenant's legal representative, dated December 17, 2015, which provided an address for the law firm and notice that the law firm was representing the Tenant.

The Agent for the Landlord stated that she does not know when the rental unit was vacated; that the keys to the unit have never been returned; and that the Tenant never informed the Landlord that the keys had been returned.

The Agent for the Tenant stated that the keys to the rental unit were left in the mailbox on December 04, 2015 or December 05, 2015 and that the Landlord was informed of the location of the keys by email.

The Tenant is seeking compensation for costs associated to moving out of the rental unit, including $2,000.00 for labour associated to packing and moving from the rental unit; $300.00 for the renting a moving truck, and $374.52 for disconnecting/reconnecting services.

Analysis:

Section 32(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must provide and 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.

Although no evidence of safety and housing standards were submitted in evidence, I find it reasonable to conclude that section 32(1) of the *Act* requires the Landlord to ensure the roof of a rental unit does not allow water to leak into the rental unit.

On the basis of the undisputed evidence I find that a roofer covered the roof of the rental unit with a tarp within a few days of a leak being reported to the Landlord on October 31, 2015 and that the roof did not continue to leak after this temporary repair was completed. Although the roof was merely covered with a tarp I find that this temporary repair was sufficient, as it stopped water from leaking into the rental unit. I therefore find that the Landlord complied with section 32(1) of the *Act* when the Landlord took reasonable steps to temporarily repair the leak.

In determining that the Landlord took reasonable steps to comply with section 32(1) of the *Act*, I was influenced by the testimony of the Agent for the Landlord, who stated that the roofer recommended the Landlord wait for the weather to improve before repairing the roof. Given that the roof was no longer leaking, I find it was reasonable for the Landlord to delay the repair.

On the basis of the undisputed evidence I find that there was a flood in the rental unit on November 13, 2015 which damaged a significant portion of the lower level of the rental unit. On the basis of the testimony of the Agent for the Tenant and in the absence of

evidence to the contrary I find that after the flood there was a strong smell of mould throughout the rental unit, which rendered the entire rental unit uninhabitable. I find it reasonable to conclude that the smell of mould would not have been present until at least November 15, 2015, given that it would take time for mould to grow.

As the Tenant could have reasonably occupied the rental unit between November 01, 2015 and November 15, 2015, I dismiss the Tenant's application for a rent refund for this period. I find that the Tenant is entitled to a rent refund for the period between November 16, 2015 and November 30, 2015, in the amount of $1,300.00.

As the Landlord was uncertain of when the damage to the rental unit was repaired, I find it reasonable to conclude that the smell remained in the rental unit for the month of December. As it is reasonable to conclude that the rental unit remained uninhabitable for the month of December, I find that the Tenant is also entitled to a rent refund of $2,600.00 for that month.

I find that providing a habitable rental unit is a material term of any tenancy agreement. As the rental unit was uninhabitable because of the smell for a period of time after the flood on November 13, 2015, I find that the Landlord failed to comply with a material term of the tenancy agreement.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy 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 find that the Tenant informed the Landlord that a material term of the tenancy was being breached in the email the Tenant sent on November 16, 2015. Although the Tenant does not use the term "material term", I find that the Tenant made it sufficiently clear that they wished to end the tenancy because of the smell in the house and because of the roof that had leaked.

As it is reasonable to conclude that the rental unit remained uninhabitable for the month of December, I find that the Landlord did not correct the situation within a reasonable time after receiving the email of November 13, 2015. While I accept that it can take many weeks to repair a home after a flood, I find it unreasonable for a landlord to expect any tenant to live in a rental unit for any significant period of time if that rental unit has a foul odour throughout the unit.

I therefore find that the Tenant had the right to end the tenancy pursuant to section 45(3) of the *Act*. I find that this tenancy ended on December 22, 2015 in accordance with the Tenant's written notice to end tenancy, dated December 18, 2015.

Although I accept that the Tenant had the right to end the tenancy, pursuant to section 45(3) of the *Act*, I find that the Tenant submitted insufficient evidence to establish that the Landlord breached section 32(1) of the *Act* when it failed to repair the flood damage

in a timelier manner. In reaching this conclusion I was heavily influenced by:

- the undisputed evidence that there was a significant amount of damage in the rental unit;
- my understanding, derived from my experience in adjudicating such matters, that it often takes many weeks to complete repairs of this nature;
- the undisputed evidence that the damage to the rental unit was covered by the Landlord's insurance; and
- my understanding, derived from my experience in adjudicating such matters, that repairs are often delayed when an insurance company is involved with the repairs.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord not complying with the *Act*, the regulations or the tenancy agreement. In these circumstances I find that the Landlord made reasonable efforts to repair the rental unit after the flood and that the Tenant was entitled to end the tenancy early because of the nature of the damage to the unit, rather than a delay in initiating repairs. As there is insufficient evidence to conclude that the Landlord did not initiate repair in a reasonably timely manner, I dismiss the Tenant's application for costs associated to moving out of the rental unit.

On the basis of the undisputed evidence I find that the Landlord received a letter, dated December 17, 2015, from the law firm representing the Tenant. I find that this letter informed the Landlord that the law firm was acting on behalf of the Tenant; that a settlement payment could be forwarded to the law firm; and that the letter provided an address for the law firm. I find that the Landlord know, or should have known, that this letter served to provide the Landlord with a forwarding address for the Tenant.

Even if the Landlord did not understand that the address provided in the letter of December 17, 2015 was a forwarding address when that letter was received, I find that the Landlord should have recognized it was a forwarding address when the Landlord received the Tenant's Application for Dispute Resolution. I note that the mailing address on the Tenant's Application for Dispute Resolution is the address for the law firm.

Section 38(1) of the *Act* stipulates 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 and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection

38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit, which is $2,600.00.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $6,600.00, which includes a rent refund of $3,900.00; double the security deposit, in the amount of $2,600.00; and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province 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: August 18, 2016

Residential Tenancy Branch