



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BVA Consulting
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award. The hearing was conducted by conference call. The landlord attended and the tenant attended with C.D., her representative. C.D. also testified on behalf of the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in West Vancouver. The tenancy began October 1, 2015. According to the tenancy agreement submitted by the landlord, the monthly rent was \$2,500.00, payable on the first of each month. The landlord testified that there was flooding in the basement of the house and beginning in December, 2015 the rent was reduced to \$2,000.00 per month due to the inconvenience and loss of use caused by the flooding. The rental property was sold to a new owner in February, 2016. The sale completed and the new owner was to have possession of the rental property on May 12, 2016. In a previous dispute resolution proceeding and decision dated June 13, 2016, the landlord was granted an order of possession effective June 30, 2016, pursuant to a two month Notice to End Tenancy for landlord's use. The tenant moved out of the rental unit pursuant to the two month Notice to End Tenancy. In this application the landlord has claimed for unpaid rent from February, 2016 to May 13, 2016. The landlord said that the tenant paid only \$1,500.00 per month for February, March and April and paid \$700.00 for May. The landlord claimed that the tenant owes \$2,800.00 in unpaid rent, being \$500.00 for each month of February, March and April and \$1,300.00 for May. The landlord testified that the rent was supposed to be discounted by \$500.00

per month for work to be done by the tenant. The landlord said that the tenant was supposed to produce receipts for work done to qualify for the rent reduction.

The tenant and her representative, also attending as a witness disputed the landlord's evidence. The tenant said that the rent was further reduced because the landlord had not made necessary repairs after the flood and there were continuing problems with pests and mould in the house. The tenant said the landlord was unwilling to spend money on the house because it was sold. The tenant said that the rent was reduced to compensate the tenant for putting up with the ongoing problems and for work that she performed herself; the reduction was not based on the production of receipts for work paid for by the tenant.

The landlord disagreed with the tenant's testimony; he argued he would have fixed the necessary items himself if the tenant had not agreed to have the work done.

Analysis

The landlord has claimed unpaid rent for February, March, April and May. The tenant testified that the rent was reduced for these months by agreement because of the flooding, loss of use, deteriorating condition of the rental unit and a pest and mould problem. The landlord said that the rent was to be reduced as compensation for repairs to the rental property to be paid for by the tenant and for which the tenant was to supply receipts as proof of payment. There is no written agreement setting out the terms of the rent reduction. The landlord said that he would have performed and paid for the repairs himself had he known that the tenant was not going to do the work

The landlord and the tenant agreed that there was a flood that rendered a portion of the rental unit unusable. They agreed that the rent was reduced to \$2,000.00 because of the loss of use. The evidence established that the parties agreed to a further rent reduction, but they disagreed as to the terms of the reduction. The landlord said the tenant was to provide receipts for work done in order to qualify for the rent reduction. I did not find the landlord's evidence convincing as to the terms of the rent reduction. The landlord sold the property in February. I find it more likely that, having sold the rental unit, he was not interested in spending more money on repairs or improvements and, as the tenant claimed, he agreed to a further reduction of rent so as to avoid performing additional work to the rental property. He accepted the reduced payments for four months without making any objection and only brought this claim after the sale completed and the tenancy ended. The landlord did not provide documentary evidence to establish that he was entitled to collect rent from the tenant after the sale completed. He did not submit a statement of adjustments or other document to show that the tenant

was obliged to pay rent to him after May 12, 2016. The landlord has the burden of proving on a balance of probabilities that he is entitled to a monetary award. I did not find his evidence to be convincing; I found the tenant's version of events to be more probable and the landlord's claim for a monetary award is therefore dismissed without leave to reapply.

Conclusion

The landlord's claim for a monetary order is dismissed.

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: January 3, 2017

Residential Tenancy Branch