



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for the costs of emergency repairs and a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The tenant's agent, her son, and the landlord's agent attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord's agent said she had not submitted the landlord's evidence to the tenant, which were 4 photographs. The landlord's agent was informed I would not consider that evidence as it was not sent to the other party, the tenant. There were no issues raised with the tenant's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

Background and Evidence

The undisputed evidence shows that the tenancy began on November 1, 2007, and ended on March 27, 2019, when the tenant vacated the rental unit. The monthly rent at the start of the tenancy was \$800.00 and at the end of the tenancy was \$1,250.00. The tenant paid a security deposit of \$400.00 at the beginning of the tenancy, and since the tenancy has ended, the security deposit has been returned to the tenant.

The rental unit was in a multiple-unit, multiple floor building.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of use of the rental unit, February 8-16, 2019, 9 days	\$375.00
2. Loss of use of the rental unit, March 27-31, 2019, 5 days	\$208.33
3. Insurance deductible	\$500.00
TOTAL	\$1,083.33

In support of and in response to the tenant's application, the parties provided the following submissions:

#1- Loss of use of the rental unit, February 8-16, 2019

The tenant's agent submitted that on February 8, 2019, a pipe burst in the bathroom of the rental unit, causing a flood and making the rental unit uninhabitable. The restoration company for the strata was called immediately and advised the tenant that until the emergency repairs were made, she would have to vacate the rental unit.

The tenant's agent said the flood was so bad, the water spread to 3 or 4 other apartments and there were up to 2" of water in the tenant's bathroom, that the flood went into the carpet, into the kitchen and under the baseboard, into the dining area.

The tenant's agent said that the landlord asked him to coordinate with the restoration company.

The tenant's agent submitted that the tenant was required to be out of the rental unit from February 8-16, 2019, while the repairs were being made.

In response, the landlord's agent submitted that when the first flooding happened, no one in the 200 unit building was required to leave. The landlord's agent confirmed that she had no idea if the restoration company advised the tenant she had to leave.

#2- Loss of use of the rental unit, March 27-31, 2019

The tenant's agent submitted that there was a second flood due to the landlord's negligence. He said that the landlord had a friend, who was not a licenced plumber, repair the water supply line. The insufficient repair caused the repaired pipe to burst again.

The tenant's agent said that on the night in question, his mother used the toilet at 2:00 a.m., and went back to bed. Not long after, there was a banging on her door, she woke in a panic, and found that the building's security was at the door. The tenant called her son, who was there within 15 minutes.

According to the tenant's agent, at this time, there were at least 4" of water in the rental unit, the estate manager was called and asked who fixed the supply line. The estate manager said he would deal with the issue when he learned that an uncertified plumber repaired the supply line the first time.

The tenant's agent said the restoration company told him that his mother would have to vacate the rental unit and that she should be prepared to stay out 3-4 months. The tenant's agent said he waited until 9:00 a.m. to call out of courtesy and report to the landlord, who said to him, "Your mother is not my problem, my apartment is".

The tenant's agent said the flooding and having to vacate the rental unit was extremely distressful to his elderly mother, and when he called the Residential Tenancy Branch ("RTB"), he was advised to move her personal property.

The tenant's agent said they are seeking the prorated rent for the number of days the tenant was out of the rental unit for loss of use, as she had paid the full rent each month.

In response, the landlord's agent said the tenant's insurance policy would pay the tenant for the amount of rent she had to pay. She further stated that there were 11 other units affected, but no other tenants had to move out. The landlord's agent questioned whether the tenant's rental unit was impacted as water runs down.

The landlord's agent said that "J", the person making the first repair, is a qualified plumber.

Insurance deductible-

The tenant's agent said that they were not claiming the deductible for the first flood, but were claiming for the second deductible as the landlord's negligence caused the tenant to make another claim.

The landlord's agent said she wanted proof.

In response to my inquiry, the tenant's agent said there was one bathroom in the rental unit. He further said that he had firsthand knowledge of the situation involving the claim, as his mother was elderly and he was called to come over when the floods happened. Further, he was on hand to witness the flooding and to deal with the restoration company.

In response to my inquiry, the landlord's agent said she did not have first-hand, personal knowledge of any of the tenant's interactions with the landlord, the restoration company, or the condition of tenant's rental unit. She said that she was able to give testimony as she talked to the landlord, other tenant's in the building, and the tenant.

Analysis

Upon review of the relevant evidence and on a balance of probabilities, I make the following findings:

#1- Loss of use of the rental unit, February 8-16, 2019

In this case, I find the tenant, through her agent, submitted sufficient evidence to show that due to the flood, she had to vacate while the restoration remediated her rental unit. The flood occurred in the only bathroom in the rental unit.

I did not find the landlord's agent provided compelling evidence as she confirmed having no first-hand or direct knowledge of the situation.

While I do not find the landlord was negligent in this instance, I do find that the tenant lost the use of her rental unit during this time period and is entitled to compensation.

I find it reasonable to and I grant the tenant a monetary award for the prorated rent amount for 9 days, as claimed by the tenant, in the amount of \$369.90. ($\$1,250.00$ monthly rent \times 12 months = $\$15,000.00$ yearly rent \div 365 days = $\$41.10$ daily amount @ 9 days = $\$369.90$).

I note this amount varies slightly from the tenant's monetary claim.

#2- Loss of use of the rental unit, March 27-31, 2019

I find the tenant's agent provided compelling, undisputed evidence that a second flood occurred in the rental unit, on March 27, 2019, this time worse than the first flood. I also find the tenant's agent submitted sufficient undisputed evidence that the tenant was instructed to vacate the rental unit for up to four months, and left her no choice but to vacate the rental unit.

I did not find the landlord's agent provided compelling evidence as she confirmed having no first-hand or direct knowledge of the situation.

As the undisputed evidence shows that the tenant paid rent for March 2019, I find it reasonable to compensate her for the loss of use of the rental unit for the relevant time period claimed by the tenant.

I find it reasonable to and I grant the tenant a monetary award for the prorated rent amount for 5 days, as claimed by the tenant, in the amount of \$205.50. ($\$1,250.00$ monthly rent \times 12 months = $\$15,000.00$ yearly rent \div 365 days = $\$41.10$ daily amount @ 5 days = $\$205.50$)

I note this amount varies slightly from the tenant's monetary claim.

Insurance deductible-

I find the tenant submitted undisputed evidence that the landlord did not have a qualified, licenced plumber to make the repair to the supply line after the first flood in February 2019. I therefore find that the tenant is entitled to compensation for the payment of the \$500.00 insurance deductible for having to make a second claim.

While the landlord's agent stated that the plumber was licenced, the tenant's evidence claimed that he was not. The landlord was therefore made fully aware that this matter would be at issue, yet she supplied no documentary evidence that he was. As her agent had no first-hand or direct evidence of her own, I accept the tenant's undisputed evidence.

I therefore find the tenant is entitled to a monetary award of \$500.00.

Due to the above, I find the tenant is entitled to a total monetary award of \$1,075.40, comprised of loss of use of the rental unit for 9 days in February 2019, in the amount of \$369.90, loss of use of the rental unit for 5 days in March 2019, in the amount of \$205.50, and for payment of the insurance deductible as described above, in the amount of \$500.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1,075.40.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application is granted as she has been granted a monetary award of \$1,075.40.

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: June 19, 2019

Residential Tenancy Branch