



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FF

Introduction

This matter dealt with an application by the Tenants for compensation from the Landlord for repairs to the unit, site or property, to allow the Tenant to reduce the rent for the repairs or services are being completed or supplied and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 26, 2019. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for repairs that were needed to be completed and if so how much?
2. Are the Tenants entitled to a rent reduction?

Background and Evidence

This tenancy started on November 1, 2018 as a month to month tenancy. Rent was \$875.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$437.50 on October 25, 2018. The tenancy ended on July 30, 2019 and the full security deposit was returned on August 12, 2019.

The Tenant said there was a sewer back up in their rental unit on April 24, 2019. The Tenant said she contacted the Landlord and a plumber came to the unit. The Tenant said the plumber removed the toilet and did not replace it so the Tenants were without the use of a toilet. The Tenant continued to say later a restoration company came to the unit and removed flooring and drywall from the walls but did not finish the repairs. The Tenants said after three and half months of living in the unit without the repairs

being completed they moved out. The Tenants said they are requesting the return of half their rent for three and a half months in the amount of \$1,312.50 and the \$100.00 filing fee for a total of \$1,412.50.

The Landlord said they asked the Tenants if they had renter insurance to cover the cost of alternative accommodation, but the Tenants did not respond. Further the Landlord said they contacted a plumber as soon as they were aware of the problem and then the Landlord contacted a restoration company when they understood it was a sewer back up issue. The building manager G.S. said on April 29, 2019, he offered the Tenants to move to a different unit on the second floor with a balcony for the same rent as the Tenants were paying for this unit. The building manager G.S. said the Tenants did not get back to him regarding the Landlord's offer. The Landlord submitted an email between G.S. and W.L. the property manager confirming the offer for the alternative accommodation for the Tenants on April 29, 2019.

The male Tenant confirmed the building manager G.S. offered them the unit on the second floor but they declined the offer as the Tenant's wife was 36 week pregnant and he works out of town so he said the move did not work for them. Further the male Tenant said he understood it was a sewer back up and the unit they were in was not healthy to live in.

The Landlord said in closing that the Tenant ended the tenancy without proper notice but the Landlord said given the circumstances the Landlord agreed to end the tenancy and return the Tenants' full security deposit. The Landlord said they felt they acted responsibly in this situation.

The Tenants said in closing that because the female Tenant was 36 weeks pregnant and the male Tenant worked out of town a move to a new unit was not acceptable to them. Further the Tenants believed the unit would be repaired in a timely manner so they did not think they had to move. The female Tenant said they thought the repairs would take weeks not months to be done and they believe the Landlord did not act responsibly. The Tenants requests compensation of \$1,312.50 for the time they had to live in the unrepaired rental unit.

Analysis

Section 32 of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant. Therefore a Landlord is obligated to repair items include in the tenancy agreement.

Section 33 of the Act says 33 (1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

In this situation the Tenant reported the water/sewer issue on the morning of April 24, 2019 to the Landlord. The Landlord contacted a plumber to attend to the problem the same day. It appears from the evidence the Landlord also contacted the city on April 24, 2019 to confirm the back up was a building issue not a city line issue. I find that the Landlord had full knowledge that the situation was a sewer back up on April 24, 2019 and the problem originated in the Landlord's building. At this point it is the Landlord's responsibility to offer alternative accommodation to the Tenants until the rental unit can be repaired or deemed to be safe for occupation. The Landlord did offer alternative accommodation to the Tenants on April 29, 2019 and the Tenants declined the Landlord's offer. I find the Landlord met their responsibilities to offer safe accommodation to the Tenants on April 29, 2019. Further I find the Tenants declined the Landlord's offer of alternative safe accommodations. Consequently I find the Landlord should have made the offer for alternative accommodation at the time the issue was first found to be a sewer back up or on April 24, 2019; therefore I find the Landlord is responsible for the time period of April 24 to April 29, 2019. I award compensation to the Tenants for 5 days at \$875.00 the monthly rent divided by 30 days = \$29.16/day in the amount of \$145.83. As the Tenants declined the Landlord offer of alternative accommodation on April 29, 2019 I find the Tenants have not established grounds for compensation after April 29, 2019.

As the Tenants have been partially successful in this matter I Order the Tenant to recover the \$100.00 filing fee from the Landlord. I have issued a monetary order to the Tenants in the amount of \$245.83 as compensation and to recover the filing fee.

Conclusion

A Monetary Order in the amount of \$245.83 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: September 23, 2019

Residential Tenancy Branch