



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code PSF RP MNDC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on January 26, 2020 and amended on February 3, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law;
- an order requiring the Landlord to make repairs to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss.

The Tenants attended the hearing. The Landlord attended the hearing and was accompanied by M.F., a witness. All in attendance provided a solemn affirmation.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord did not submit documentary evidence in response to the Application.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were asked on several occasions at the end of the hearing if there was any further evidence they wished to provide or documentary evidence they wished to refer me to. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the beginning of the hearing, the parties advised that the Tenants vacated the rental unit on February 24, 2020. Therefore, the parties were advised that it was no longer necessary to deal with the Tenants' requests for orders requiring the Landlord to provide services or facilities required by the tenancy agreement or law, or to make repairs to the unit, site, or property. The hearing dealt only with the Tenants' monetary claim.

Issue to be Decided

Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on March 1, 2016. As noted above, the tenancy ended when the Tenants vacated the rental unit on February 24, 2020. During the tenancy, rent was due in the amount of \$900.00 per month. The Tenants paid a security deposit in the amount of \$425.00, which the Landlord holds.

The Application discloses a monetary claim for \$1,900.00. Although a Monetary Order Worksheet submitted with the Tenants' evidence indicates the claim is for \$3,283.72, Rule of Procedure 2.2 confirms that a claim is limited to what is stated in the application. An amendment increasing the amount of the monetary claim was not submitted to the Residential Tenancy Branch. The hearing proceeded based on the amount of the claim stated in the Application. The Tenants did not raise any concerns with this determination.

The Tenants testified that a flood originating in the rental unit above occurred on December 19, 2019. This resulted in water and fecal matter flooding the rental unit making it unliveable. The Tenants submitted numerous photographs depicting the rental unit in various states of repair. J.B. testified the toilet and the shower were not available for use.

Although the Tenants testified they remained in the rental unit for several days, they decided to move into a hotel from December 23-31, 2019. J.B. testified they found the cheapest hotel possible. The cost of the hotel stay was \$801.43. A receipt confirming the arrival and departure dates, and the cost, was submitted into evidence.

As the Tenants were still unable to return to the rental unit after the hotel stay, they stayed in a friend's trailer at a local campsite, and with friends, until they were able to return to the rental unit on January 14, 2020. A bank statement describing a cost of \$453.60 for the campsite was submitted into evidence.

In addition, the Tenants claimed \$598.00 for the time spent cleaning the rental unit, which they testified was based on the hourly rate paid to J.B. for her employment. The Tenants did not provide details with respect to what cleaning was completed, how long it took, or the rate the amount claimed was based on.

The Tenants confirmed the remainder of the claim consisted of travel expenses as the Tenants had to relocate and to check on the progress of the rental unit. The Tenants also referred to the cost to purchase food and to losses of food that was stored in the rental unit.

In reply, the Landlord testified that he had insurance in place and that the Tenants had an obligation to obtain tenant's insurance. He acknowledged the difficulty faced by the Tenants but stated it is not his responsibility to insure the Tenants for their losses. The Landlord also testified that the flood was cleaned up soon after it occurred and acknowledged that the toilet was not in place from December 26, 2019 to January 10, 2020.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 32(1) of the *Act* confirms 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.

Further, section 67 of the *Act* empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

After careful consideration of the evidence and submissions of the parties, I find that the Landlord had an obligation to maintain the rental unit in a state of repair that made it suitable for occupation by the Tenants. However, I find that the rental unit was not suitable for occupation by the Tenants due to the flood that occurred on December 19, 2019 and that they were unable to return to the rental unit until January 14, 2020.

The Landlord claimed the Tenants should have purchased insurance for just such an accident occurring. If the Tenants were making a claim for their personal belongings damaged by the flood, I would tend to agree. However, when a rental unit becomes unsuitable for occupation through no fault of either party, I find that the Landlord bears the burden of making repairs and make it suitable for occupation. In this case, I find that the Landlord did make repairs in a timely manner. However, the Tenants were unable to return to the rental unit until January 14, 2020 and incurred losses as a result. I find the tenants are entitled to recover the cost of hotel and campsite accommodation and grant them a monetary award in the amount of \$1,255.03 (\$801.43 + 453.60).

With respect to food, cleaning, and transportation costs, I find there is insufficient evidence of the value of these losses before me to grant the relief sought. Throughout the hearing, the Tenants were frequently unable to refer me to documents in support of their claim or provide a precise calculation of each aspect of the claim.

Having been successful, I find the Tenants are also entitled to recover the filing fee paid to make the Application. I grant the Tenants a further monetary award in the amount of \$100.00.

Considering all of the above, and pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,355.03 (\$1,255.03 + \$100.00).

Conclusion

The Tenants are granted a monetary order in the amount of \$1,355.03. the order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 31, 2020

Residential Tenancy Branch