



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, MNDCT, FFT

Introduction

This hearing was scheduled to convene at 11:00 a.m. on February 11, 2022 by way of conference call concerning an application made by the tenant seeking the following relief:

- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call. The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and evidence by registered mail on October 16, 2021 and was permitted to provide proof of such service after the hearing had concluded. I now have a photograph of a registered mail package addressed to the landlord stamped October 16, 2021 by Canada Post, and I am satisfied that the landlord has been served in accordance with the *Act*.

During the course of the hearing the tenant testified that repairs are almost completed and the tenant withdraws the application for an order that the landlord make repairs to the rental unit or property.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use and quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 15, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$2,900.00 was originally payable on the 1st day of each month, which has been increased to \$2,975.40, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and the landlord does not reside on the property. The landlord is a property manager who manages the property on behalf of the owner, and the tenant does not deal with the owner.

The tenant further testified that on March 11, 2021 while in the shower, the tenant was alerted by her daughter that water was coming out through the light fixture in the kitchen. Then the water gushed out of the hood vent above the island and spread across the ceiling to the other end of the wall. The rental unit has an open-concept floor plan, with the dining room, kitchen and living room as all one large living space, with the kitchen in the middle. The tenant's daughter went to the upper unit to alert the occupants in the building, and discovered that a contractor was installing a shelf and when he hit a nail, it hit the water sprinkler or pipe and didn't know it.

The tenant and daughter used as many towels as they could but water kept coming down. It took an hour or more before it stopped, even after the water was turned off, but not gushing at that point.

Day to day use of the property was a loss of more than 50%. The tenant also works from home so the whole situation has been medically trying on the tenant. The tenant had to leave the rental unit for surgery in November, 2021 and had asked the landlord to have the repairs done prior to that, but the tenant could not do any regular activities, including cooking for almost a year, and had to clean everything after grey water poured into the rental unit. The tenant's insurance covers the tenant's personal belongings, but the lack of attention by the landlord has not been good for the tenant and family.

The tenant's application also seeks recovery of a \$2,000.00 insurance deductible, however the tenant testified that the amount has been recovered from the unit above, and the tenant withdraws that portion of the claim.

Copies of emails and letters to the landlord have been provided for this hearing requesting a rent reduction and monetary compensation, and no repairs were completed by the landlord from March, 2021 to September, 2021, but the landlord didn't respond for the longest time. However, the landlord sent an email to the tenant on February 3, 2022 negotiating the compensation. The tenant replied that the tenant would accept \$750.00 per month from March to November, 2021 and \$400.00 for the months of December, 2021 and January, 2022. The landlord countered at \$300.00 for December and January, and the tenant accepted that.

The tenant's application seeks a rent reduction of \$10,412.50 in addition to monetary compensation for damage or loss of \$2,000.00. However, the tenant the agreed amounts set out above and recovery of the \$100.00 filing fee.

Analysis

I have reviewed all of the evidentiary material, and considering the undisputed testimony of the tenant, I find that the landlord was tardy and negligent in accepting responsibility while the tenant and daughter lived in a rental unit for months that was in serious need of repair.

I also accept the undisputed testimony of the tenant that the parties agreed to a rent reduction for loss of quiet enjoyment of \$750.00 each month from March, 2021 to November, 2021, inclusive, being \$6,750.00; and \$300.00 per month for each of the months of December, 2021 and January, 2022, for a total of \$7,350.00 (\$6,750.00 + \$600.00 = \$7,350.00). Considering the length of time for repairs to be completed, and the amount of rent is \$2,975.40 per month, I find those amounts to be reasonable, and I so order.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$7,450.00, and I order that the tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed, as withdrawn by the tenant.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,450.00.

This order is final and binding and may be enforced.

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: February 18, 2022

Residential Tenancy Branch