



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on May 16, 2023 by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for the landlord's failure to comply with the *Act* by using the rental unit for the purpose contained in a notice to end the tenancy, or used the rental unit for at least 6 months duration; 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 advised that the landlord was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on September 15, 2022 which was received by the landlord on September 21, 2022. The tenant has provided a Canada Post cash register receipt dated September 15, 2022 containing a tracking number, and a Canada Post tracking document showing that the registered mail was accepted by the recipient at the post office on September 21 2022. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

At the commencement of the hearing, I determined that the tenant's application seeks only monetary compensation for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and does not seek damages for the landlord's failure to comply with the *Act* by using the rental unit for the purpose contained in a notice to end the tenancy, or used the rental unit for at least 6 months duration, and I dismiss that portion of the application, which has been made in error.

All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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 recovery of rent and utilities when the rental unit was uninhabitable?

Background and Evidence

The tenant testified that this fixed-term tenancy began on November 1, 2021 and was to revert to a month-to-month tenancy after October 31, 2022. However, the tenant moved out on July 21, 2022 when a sewage flood occurred, and all of the tenant's belongings were moved out by August 17, 2022. Rent in the amount of \$1,650.00 was payable on the 1st day of each month and there are no rental arrears to the end of August, 2022. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$825.00 as well as a pet damage deposit in the amount of \$825.00. The landlord has returned the sum of \$825.00, however the tenant makes no claim for the other deposit. The rental unit is an apartment in a 2-storey building containing commercial space on the bottom floor and residential on top. A copy of the tenancy agreement has been provided for this hearing.

On July 22, 2022 the tenant notified the landlord by email of a large sewage flood that had occurred in the rental unit the day prior, with a large quantity of sawdust coming out of the toilet and floor drain as well as fecal matter. The email also advises the landlord that no one from the landlord's office or a restoration company had contacted the tenant. A copy of the email with various photographs have been provided for this hearing.

On July 23, 2022 the tenant requested a Mutual Agreement to End Tenancy from the landlord because the rental unit had become uninhabitable.

On August 3, 2022 the tenant requested return of August rent, but no response was received.

On August 11, 2022 the landlord provided the tenant with a letter stating that restoration services must be completed in the rental unit and asking that the tenant remove all belongings so that the work can be completed. It also states that as a good faith

measure, the landlord agrees to waive liquidated damages if the tenant would be able to facilitate the removal of the tenant's items as soon as possible. A copy of the letter has been provided for this hearing.

On August 16, 2022 the tenant requested that August's rent of \$1,650.00 be returned, and agreed to vacate the rental unit by 11:59 p.m. on August 17, 2022.

The tenant has also provided a Monetary Order Worksheet setting out a claim of \$2,305.95 for recovery of rent and utilities paid by the tenant. The tenant has also provided a calculation sheet indicating that the daily rent was \$54.25, and that rent paid for days in July that the rental unit was uninhabitable is \$596.75 for 11 days from July 21 to 31, 2022, as well as August's rent of \$1,650.00. It also states that the daily usage estimate from the hydro bill amounts to \$59.20, and a copy of the bill has been provided for this hearing, which also contains an average daily usage amount.

The tenant has asked the landlord for reimbursement and advised that if the tenant had not heard back from the landlord within 2 days, the tenant would apply for compensation. The landlord did not respond.

Analysis

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, I am satisfied that the tenancy was devalued as a result of sewage in the rental unit rendering it uninhabitable, at no fault of the tenant. Therefore, the onus lies on the landlord to make repairs as quickly as possible.

The tenant had paid rent for the months of July and August, 2022, and the tenant should recover some rent. I also find that the tenant ought not to be responsible for utilities during that time period. The emails sent by the tenant to the landlord indicate that the tenant did what was reasonable to mitigate any damage or loss suffered.

In the circumstances I am satisfied that the tenant has made out the claim of \$2,305.95. 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 \$2,405.95. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, 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 \$2,405.95.

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: May 19, 2023

Residential Tenancy Branch