



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on May 22, 2022, wherein the Tenants sought monetary compensation from the Landlord in the amount of \$7,375.00, for loss of use of a portion of rental premises during the tenancy and recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for teleconference at 1:30 p.m. on February 6, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

Background and Evidence

In support of their claim the Tenant, E.W. testified as follows. This tenancy began February 28, 2020. The Tenants rented the full house for \$2,950.00 per month.

The rental unit had two floors. The upstairs had 2 bedrooms, a living room, dining room, kitchen and a bathroom as well as various closets. The downstairs had the master bedroom, office, laundry room, bathroom, another bedroom/rec room and a furnace room.

The Tenants seek compensation for loss of use of approximately half the rental unit as a result of a flood which occurred on November 2021. The Tenants submit that they were not able to use 2 bedrooms, 1 bathroom and the laundry room. The office room was not impacted. However, they had to move their items into other rooms and had to move two of their children upstairs. In total they sought the sum of \$7,375.00 representing half the rent paid for 5.0 months while the rental unit was undergoing remediation ($\$14,750.00 / 2 = \$7,375.00$).

The Tenant stated that he made an insurance claim, and they were only compensated for the damage to their items. They were not compensated for the loss of use of the rental unit space and were informed by their insurer that the Landlord would need to make a claim with his insurer for loss of rent.

The Tenants informed the Landlord that their insurer would not cover the loss of use of the space. They asked the Landlord if they could pay a reduced amount of rent and the Landlord insisted that they continue to pay the full amount until the insurance reimbursement was sorted out.

In response to the Tenants' claim the Landlord testified as follows. The Landlord confirmed that he made an insurance claim as a result of the flooding. He further stated that he did not claim any loss of rent. The Landlord stated that he was informed by his insurance company that they would not reimburse the Landlord for loss of rent unless

the entire rental unit was not usable. The Landlord further stated that the Tenants assured him that their insurance company would deal with everything.

The Landlord stated that his insurance claim was closed in December 2022 or January 2023.

The Landlord also stated that the Tenants were unhappy with the restoration. He says he gave the Tenants the option to stay in the house, or move out all together as he was informed that the insurance company would not compensate him unless the house was unlivable.

The Landlord confirmed that he did not expect the Tenants to pay the full amount of rent although he disputed the Tenants' claim that half the rental unit was not usable. He claimed that there was only one bedroom downstairs and that the only area that was affected, was the bedroom, the shower area and the floors in the laundry room as the machines continued to work.

The Landlord testified that he lost \$7,000.00 over and above his insurance coverage including a \$2,000.00 deductible and \$3,000.00 loss of rent.

The Landlord confirmed that he did not have any coverage for the Tenant on his policy and that this was clearly set out in the addendum, which the Tenants signed.

In reply, the Tenant stated they made an insurance claim right away. He confirmed they did not claim any loss of use of the rental unit as they expected the Landlord to reduce their rent for loss of use of some of the rental unit.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find the Tenants are entitled to the amounts claimed for loss of use of a portion of the rental unit as a result of a flood and remediation of the unit. I award the Tenants these sums based on the devaluation of their tenancy due to the loss of quiet enjoyment and use of half the rental unit.

I accept the Tenants' testimony as to the rooms directly affected by the flood as well as the impact on other rooms as they needed to move their items to areas which were not damaged. I further accept their testimony that they asked the Landlord to reduce their rent for the affected months in recognition of their lack of use of portions of the rental unit.

The evidence before me confirms the Tenants paid \$2,950.00 in rent for use of the entire home. As a result of the flooding, and subsequent remediation, they were unable to use portions of the home, including two bedrooms, one bathroom and a laundry room. The Tenants provided evidence as to the layout of the home as well as indicating which rooms were not useable and which were partially unusable due to the movement of items into those spaces. The Tenants also provided photos of the rental unit showing stacks of boxes and tubs of personal effects which were moved from the affected rooms to other rooms in the home. It is clear this flood had a significant effect on the Tenants and greatly reduced the useable areas on the home. I accept their testimony and evidence that half of their home was unusable due to the flood and remediation.

I accept the Tenant's testimony that when he asked the Landlord to reduce their rent the Landlord insisted they continue to pay the full amount of rent until the insurance matters could be resolved. While it is unfortunate the Landlord has closed his insurance claim, this does not render the Tenants' losses unrecoverable.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including, but not limited to: rights to reasonable privacy; freedom from unreasonable disturbance; and, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair.

I accept the Landlord's evidence and testimony that they took all reasonable steps to ensure the remediation would minimize the impact on the Tenants.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a

portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

While I accept that the Landlord took great efforts to minimize the disturbances and impact on the Tenants, I find it undeniable that the Tenants suffered a loss of quiet enjoyment, as more than half their living space was either unusable, or filled with boxes from the directly affected areas and therefore they suffered a subsequent loss in the value of the tenancy for that period. As a result, I find the tenants are entitled to compensation for that loss.

I accept the amounts of compensation proposed by the Tenants as half the rent paid for the five months the rental unit was undergoing remediation. As the Tenants paid \$2,950.00 per month, they are entitled to the **\$7,375.00** claimed. Having been successful in their Application I also award them recovery of the filing fee for a total of **\$7,475.00**.

Conclusion

The Tenants’ claim for compensation is granted. The Tenants are awarded a Monetary Order in the amount of **\$7,475.00** representing half the rent paid for the 5 months the rental unit was undergoing remediation and recovery of the filing fee. The Tenants must serve the Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: July 13, 2023

Residential Tenancy Branch