



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

INTERIM DECISION

Dispute Codes CNR; MNDC; FF

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Unpaid Rent; a monetary order for compensation or loss under the tenancy agreement, the Act, or the regulation; and recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues(s) to be Decided

- Should the Notice to End Tenancy for Unpaid Rent issued July 9, 2009, be cancelled?
- Are the Tenants entitled to compensation for loss of use of all or part of the rental unit?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Preliminary Matter

At the onset of the Hearing, the Landlord's agent requested that the Application be amended to reflect the name of the Landlord only. The Landlord's agent was named on the Application and the Landlord's agent is not a stakeholder, and not personally responsible as Landlord. The Landlord's agent is not the owner of the rental property.

I grant the Landlord's agent's application and amend the Application to reflect the name of the Landlord only.

Background and Evidence

Facts on which the parties agree:

- The tenancy began on June 1, 2002.
- Current rent for the rental unit is \$1,295.00, due on the first day of each month.
- On June 13, 2009, there was a flood in the apartment directly above the Tenants' rental unit. This flood caused extensive water damage to the Tenants' unit.

The Tenants gave the following testimony:

As a result of the flood in the apartment above them, the Tenants were unable to stay in the rental unit. Water was leaking from the ceilings for two days, and all rooms were affected with the exception of the solarium. The restoration company installed fans and dehumidifiers in the Tenants' suite, which were operating day and night from June 15th to June 26, 2009. This equipment made the rental unit unliveable due to noise from the fans, humid conditions, and wet carpets.

On June 30, 2009, the restoration company cut holes in the walls and closets to facilitate further drying, including the walls in the Tenants' son's room. There are exposed wires showing where the holes have been cut. To date, the walls have not been repaired. Baseboards have not been replaced. The underlay for the carpets has been removed and not replaced. The Tenants are concerned about possible mould growth in the bathroom.

The Tenants arranged for reduced-rate hotel rooms for the nights of June 13, 2009 to and including June 19, 2009. They stayed with friends for the nights of June 20 to June

25, 2009. The Tenants applied to be reimbursed by the Landlord for the cost of the hotel rooms.

The Tenants testified that there has been no further action taken by the Landlord or strata council with respect to restoration of their rental unit since June 30, 2009. They also testified that although they repeatedly tried to follow up with the Landlord's agent to see what was happening, the only response they received was that they would have to deal with the strata council themselves.

The Tenants also applied for recovery of their prorated rent, for the period of 14 days at \$43.00 per day.

The Tenants further applied for compensation in the amount of \$21.00 for the electricity used by the fans and dehumidifiers, which was charged to their electric bill.

The Landlord's agent came to view the Tenant's suite on June 30, 2009. Due to the state of disrepair, the Landlord's agent agreed that July rent would not be withdrawn from the Tenants' bank account. (The Tenants had authorized automatic monthly withdrawals from their bank account for rent payments.) Despite their agreement, and despite the fact that the Landlord did not make the regular monthly withdrawal for July rent, on July 15, 2009, the Tenants received a Notice to End Tenancy for Unpaid Rent for July. The Tenants paid the Landlord the rent within 5 days of receiving the Notice, and applied to cancel the Notice to End Tenancy.

The Landlord's agent gave the following testimony:

The flood occurred on June 13th, which was a Saturday. The Tenants did not utilize the Landlord's emergency number when calling the Landlord about the flood. Instead, the Tenants left a message on the Landlord's answering machine. When the Landlord's agent got the message on Monday, he immediately followed up on the call and got the

restoration started as quickly as possible. The Landlord's agent could not get in touch with the Tenants and did not know they were staying in a hotel until Tuesday, the 16th.

The Tenants could have been reimbursed under their insurance for their hotel bills. In any event, the Tenants chose to stay in luxury hotels, instead of more economical hotels. A reasonable cost for staying in a downtown Vancouver hotel is \$90 to \$100.00 per day, plus G.S.T. The Landlord's agent knows of other tenants who paid \$95.00 a night for accommodation in downtown Vancouver.

There are still "drying ports" cut out in the walls of the Tenants' suite. The walls are dry, however, and mould would not have had time to grow.

The rental unit is in a condominium property run by a Strata Corporation. The Strata Corporation has been very slow to deal with the repair and restoration. The Landlord is not at fault, because the Landlord does not co-ordinate the contractors. The Landlord can not force the Strata Corporation to move more quickly. The Landlord's agent also advised the Tenants to ask the site building manager about the restoration time lines. The Landlord's agent is also frustrated, as his calls to the strata property manager are not being returned.

The Landlord's agent did not tell the Tenants that there would be no rent due for the month of July. The Landlord's agent told the Tenants that the Landlord was considering compensation, and would advise the Tenants what their reduced rent would be. The Landlord's agent admitted that the Tenants were never advised what the reduced rent would be. The Landlord's agent advised the Tenants that as repairs are still ongoing, they will wait to assess any further rent reduction, which will be conditional upon the owner's approval.

Analysis

RE: Application to cancel Notice to End Tenancy for Unpaid Rent

I accept the Tenant's testimony that the regular monthly withdrawal for July's rent was not completed by the Landlord. In any event, the Tenants paid July's rent in full within five days of receiving the Notice to End Tenancy, and furthermore within five days of receiving the Notice, they filed their Application for Dispute Resolution. Therefore, the Notice to End Tenancy issued July 9, 2009, is cancelled and the tenancy remains in full force and effect.

RE: Tenants' application for compensation for damage or loss

The Landlord's agent testified that he was initially unaware of the flood because the Tenants had left a message on an answering machine, rather than calling the Landlord's emergency number. Section 33(2) of the Act provides that a landlord must post or maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. The Landlord has not posted an emergency contact, or provided the Tenants with written contact information in the event of an emergency. A copy of the tenancy agreement, which was provided into evidence, does not contain this information.

In order for the Tenants to be successful in their application, the evidence must meet a four part test:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the Act;
3. What is the value of the damage or loss; and
4. What steps, if any, were taken to mitigate the damage or loss.

Based on the testimony of both parties, I find that the Tenants suffered the loss of the use of their residence for the period of June 13 to June 25, 2009, due to the flooding of their suite and the equipment installed to clean up the water.

Contrary to the Landlord's agent's allegation that the Tenants paid too much for hotel accommodations, I do not find \$129.00 per night for 4 nights' accommodation and \$108.00 per night for one night's accommodation to be unreasonable amounts to pay for hotel rooms in downtown Vancouver. The Tenants provided documentary evidence and testimony to support the fact that, although they stayed in good quality hotels, they did so at reduced rates. The Tenants provided documentary evidence of 5 nights' hotel accommodation (June 13, 15, 16, 17 and 18), rather than the six nights they claimed. Including taxes, based on the documentary evidence provided, the total amount paid by the Tenants amounted to \$725.06.

I find that the Tenants were not able to return to their home until June 25, 2009, when the dehumidifiers and fans were removed from their suite. I further find that the Tenants are entitled to rent abatement, prorated at a per diem amount of \$43.17 for the period of June 19 to and including June 25, 2009.

The Tenants did not provide documentary evidence to support their claim of \$21.00 for additional utilities.

The Tenants have not had full use and enjoyment of their home since June 30, 2009. I find that a reasonable value of that loss is 15% of the monthly rent of \$1,295.00.

Section 32(1) of the Act states:

A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Landlord's agent testified that the completion of the restoration in the Tenants' home is beyond his control and that he is also frustrated by the inaction of the strata council. The Landlord has a duty to the Tenants to do everything reasonable to ensure the restoration is done in a timely manner, thus ensuring compliance with Section 32(1) of the Act. The Landlord has not provided evidence of any mitigation he has undertaken to provide the Tenants with a rental unit suitable for occupation by the Tenants which complies with the health, safety and housing standards required by law. For example, the Landlord has not provided documentary evidence of any letters he has written to the strata council, or provided dates of strata council meetings he has attended. In fact, the Landlord's agent stated that the Landlord is not responsible to the Tenants, and simply washed his hands of the matter.

I find that the Landlord has not complied with Section 32 of the Act and that damage or loss has resulted from the Landlord's non-compliance.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

The Tenants have established a monetary claim for damages, as follows:

Hotel accommodations for June 13, 15, 16, 17 and 18, 2009	\$725.06
Prorated rent for June 19 to 25, 2009	\$302.19
Prorated rent abatement from June 26 to June 30, 2009 @15%	\$32.38
Rent abatement for the month of July, 2009 @ 15%	\$194.25
Rent abatement for the month of August, 2009 @15%	\$194.25
Prorated rent abatement from September 1 to September 4, 2009	\$25.90
Recovery of the filing fee	\$50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$1,524.03

Pursuant to Section 72(2)(a) of the Act, the Tenants may deduct the amount of \$1,524.03 from future rent due to the Landlord.

I make the following interim Orders on the Landlord. The Landlord must:

- Take reasonable steps to ensure the restoration of the Tenants' residence; and
- Comply with Section 32 of the Act.

This matter is adjourned to a later date, and the Notice of Adjourned Hearing is enclosed with this Interim Decision and Orders. When the Hearing resumes, the Tenants and Landlord must report on the work conducted in the interim.

If the Landlord does not comply with these Orders, I shall make an order at the next hearing for rent reduction from September 5, 2009, until the Landlord complies.

Conclusion

The Notice to End Tenancy issued July 9, 2009 is cancelled. The tenancy remains in full force and effect.

I hereby order that the Tenants are entitled to deduct the amount of \$1,524.03 from future rent due to the Landlord.

This Hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing.

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 9, 2009.
