

DECISION AND REASONS

Dispute Codes: CNR, MNR, MNDC, MNSD, ERP, RP, PSF

Introduction

This hearing was convened upon the application of the tenants. At the hearing of the matter the tenants testified that they had already vacated the premises and they therefore wished to withdraw all applications save and except their applications seeking:

1. A monetary order for compensation for loss;
2. Recovery of the security deposit;
3. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Background Summary

The tenants testified that a pipe burst on September 5, 2009 causing flooding into the basement area of the rental unit. The tenants testified that they reported the matter to the landlord's agent immediately by leaving a message about the emergency and advising that the washing machine was broken as well.

On September 9 the tenants say the landlord's agent left a message advising that the landlord would send a repair person to fix the washing machine but left no information about the emergency situation. The tenants called the landlord's agent to remind him about the emergency situation advising that the 3 basement rooms were uninhabitable.

The tenants say they noticed an odour and realized that backed up sewage was leaking into the basement area of the home. They called the landlord again but received no response. On September 17 the tenants called the City of Vancouver for advice on how to handle the situation. A City of Vancouver Health Inspector attended and determined that there was a broken sewage pipe was causing sewage to leak into the basement area of the home and this was a health concern.

The tenants say the landlord did send a plumber who attended on September 26, 2009 and did some digging but he did nothing more. The tenants say they then received a phone call from the landlord's agent asking the tenants to "bear with the landlord" as the matter was not covered by property insurance. The plumber did not return to resume the work and the landlord's agent advised that the work had to be stopped because the plumber was charging too much.

One of the tenants works for a restoration company and he tried to make repairs to stop the leakage while awaiting the landlord's response. While the tenant did do the work himself and he did not pay for the work out of his own pocket, he did use equipment and time and he submitted a quotation from Angel Restoration which sets out what the work performed by the tenant would have cost if he had to hire a restoration company.

Because of the loss of use of the home and the work expended, on October 1, 2009 the tenants deducted \$850.00 from their \$1,900.00 rental payment. They were subsequently served with a 10 day Notice to End the Tenancy for unpaid rent.

On October 4 the landlord asked permission to attend the rental unit to make repairs. On October 5 the landlord's contractor returned to cover the open portion of the floor containing the repaired sewer pipe.

On October 11 the laminate floors were reinstalled but, due to moisture below, the floors remained wet and the tenants had to keep the doors to these rooms closed due to an odour and mould build up. On October 31, 2009 the tenants moved out as they believed the situation still posed a health risk and they did not wish to continue to live in such circumstances.

The tenants claim the following:

Rental abatement	2,800.00
Reimbursement for repair costs and damage to personal goods due to flooding	1,000.00
Moving fees and time spent packing and missing work as a result of having to move	1,000.00
Return of Security Deposit	950.00
Total Sought	5,750.00

With respect to the item entitled "rental abatement" in the sum of \$2,800.00 the tenants say they arrived at this sum as follows:

\$50.00 per month For the period March 2009 to October 2009 for loss of use of the carport	375.00
Rental refund for loss of use for the period of September 15, when the bottom floor was uninhabitable	475.00
Rental for loss of use of the bottom floor for October	950.00
Emergency repairs undertaken to extract water, dry area and remove and safe laminate flooring	1,000.00
Total Rental Abatement Sought	2,800.00

The landlord's agent testified that the landlord did make repairs as soon as she was able. Further the landlord points out that the invoices from Angel Restorations are quotations and not invoices for work actually performed.

Findings

I have carefully considered the testimony of the parties and all of the evidence submitted by them. I find that the evidence shows that an emergency situation arose in the rental unit in which a sewer pipe burst causing sewage to leak into the basement area of the rental unit. I find the evidence also shows that the landlord did not take

immediate steps to rectify the matter and, in fact, the matter was not rectified at all until approximately one month after the pipe burst.

The Act says that a Landlord is responsible for ensuring that rental unit meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. In this case I find that the landlord did not meet her obligation and, I find that she willfully ignored her responsibility for some time. In this I prefer the evidenced of the tenants and find that the landlord was more concerned with the cost of the project than with health and safety. In this event, I find that it is reasonable that the tenants undertook steps to attempt to remediate the concerns on their own and I find that the landlord benefited from having tenants who were experienced restoration professionals.

I will award the tenants’ a monetary order as sought save for the sum sought with respect to the carport and moving expenses as I find that these claims have not been sufficiently proven.

I will issue a monetary award in favour of the tenants as follows:

Rental abatement September	\$475.00
Rental abatement October (Rent due 1,900.00 less rent paid less paid of \$850.00)	1,050.00
Reimbursement for repair costs and damage to personal goods due to flooding	1,000.00
Return of Security Deposit	950.00
Filing Fee paid for this matter	50.00
Total Sought	\$3,525.00

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.