



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, for compensation for overpayments of rent and other damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding. The Landlord applied for compensation for damages to the rental unit and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started on July 11, 2007 and ended on July 15, 2009 when the Tenant moved out. Rent was \$1,375.00 (plus utilities) until December 1, 2008 when it was increased to \$1,425.00 per month. The Tenant paid a security deposit of \$600.00 which was returned to her (with interest) by the Landlord at the end of the tenancy.

Tenant's Evidence:

The Tenant claimed that when she moved into the rental unit the house was in poor condition and needed repairs such as replacing broken or missing locks on doors and windows, replacing a bathroom cabinet, smoke detectors and bathroom fan. The Tenant said she spent 2 weeks making repairs and painting before she moved in and as a result, she sought to recover \$100.00 for 4 hours of her labour.

The Tenant also claimed that throughout the tenancy she lived in substandard conditions which included extensive mould, a rat infestation and a leaking septic tank. The Tenant said that in May of 2008, a restoration company did an investigation on at the request of the Landlord and recommended that emergency measures be taken to remedy the mould in certain walls. The Tenant said she sent the Landlord a letter dated June 30, 2008 asking her to do something about the mould because she was concerned about its potential health effects and the damage it had done to some of her clothes in a closet and a mattress in a child's bedroom.

The Tenant said the Landlord would not do the recommended repairs to the walls but instead brought her a dehumidifier to remove the moisture in the rental unit. The Tenant admitted that the dehumidifier helped somewhat and that the Landlord compensated her for having to operate it continuously but the Tenant claimed that until the tenancy ended, she repeatedly had to scrub walls with bleach and a mould killer to deal with this problem.

The Tenant claimed that in July 2008 she discovered there were rats in the roof of the rental unit. The Landlord hired an exterminator who set some traps, plugged some holes in the roof and cut some branches by which the rats were entering the roof. The Tenant said the exterminator came for 6 months and then claimed that the problem was resolved but it was not as the rats started moving around in the walls and under the house and chewed through a bedroom ceiling and kitchen floor. The Landlord then hired another exterminator who set bait throughout the rental unit. The Tenant claimed that the strong odour from rat urine and excrement and from decaying rats as well as the sound of the rats was a constant nuisance until she moved out. The Tenant also claimed that she had a fly infestation for a short time likely due to a dead rat or rats in the walls.

The Tenant said that in October 2008, she advised the Landlord in writing that the rats had chewed through the kitchen floor and in November 2008 she advised the Landlord in writing that the rats had chewed through her son's bedroom ceiling. The Tenant said she had to take steps to try to plug the holes where the rats were entering, however she claimed that the exterminator told her that the rats were attracted to the rental unit due to the sewage leaking from the septic tank under the house.

The Tenant also claimed that shortly after she moved in, she discovered that there was a problem with the septic tank. The Tenant said that the pipes were broken so that the tank frequently overflowed filling up the yard, flowing under the house and backing up into the toilet and sink. The Tenant said that the septic tank should only have had to be emptied every 4 years however during this 2 year tenancy, it had to be emptied 7 – 8 times. The Tenant claimed that when the septic tank overflowed, she was unable to use the bathroom in the rental unit until the tank was pumped out which usually took an entire day. The Tenant estimated that she lost the use of the bathroom 6 – 8 times due to the septic tank overflowing. The Tenant also claimed that there was a strong sewer water smell throughout the tenancy.

The Tenant said she finally had enough of the problems with the mould, rats and sewage and advised the Landlord in writing on June 23, 2009 that she would be ending the tenancy because these problems had not been resolved.



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Landlord's Evidence:

The Landlord claimed that she rented the rental unit to the Tenant in "as is" condition. The Landlord also claimed that while she agreed that the Tenant could make some improvements and paid for some of the supplies for the repairs at the beginning of the tenancy, she never agreed to compensate the Tenant for her labour.

The Landlord denied ever receiving the report of the restoration company issued in May 2008 and claimed that she only received an estimate for proposed repairs at that time. Consequently, the Landlord said she was never advised that the mould was an emergency or a health threat and argued that the Tenant was not qualified to make that opinion. The Landlord said she decided to pursue the most economical measures to deal with the mould and had the gutters cleaned and provided the Tenant with a dehumidifier. The Landlord also said that she advised the Tenant that if she was not satisfied with those solutions, she could move out.

The Landlord argued that the Tenant told her that the dehumidifier was working. The Landlord also argued that her new tenants have had no problem with mould since they moved in. The Landlord provided photographs of the walls that she said she took on November 26, 2009 which she claims shows that no mould exists. The Landlord also claimed that the walls were in the same condition when the photos were taken as they were in when the Tenant moved out.

The Landlord also argued that she should not be responsible for compensating the Tenant for a damaged mattress and clothing. The Landlord said the mattress appeared to have stains on its underside which is inconsistent with the Tenant's claim that it was damaged by touching the wall which had mould. The Landlord further argued that there was no evidence to support the value of the mattress claimed by the Tenant and no evidence of the Tenant's damaged clothing.

The Landlord claimed that she did everything she could to try to get rid of the rats. The Landlord said she was advised by the 1st exterminator she hired that the problem was resolved after about 6 months however when the Tenant later complained about a fly infestation, she hired another exterminator who found no evidence of flies. The Landlord provided invoices from the 2nd exterminator in December 2008 who did not find flies but did find further evidence of rats and recommended sealing entry holes. A 3rd exterminator hired by the Landlord noted on an invoice dated May 26, 2009 that the rental unit had a "moderate to severe rat infestation."

The Landlord also claimed that she took steps to maintain the septic tank and had it pumped out whenever the Tenant would call her. The Landlord said she did not know there was a problem with the septic tank and felt it could be adequately maintained.



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Analysis

Landlord's Application:

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The Landlord admitted that she did not do a move in or a move out condition inspection report. The Landlord also admitted that she returned the Tenant's security deposit at the end of the tenancy, however, she argued that she did not discover the damages to the middle of the linoleum floor in the kitchen until a new tenant brought it to her attention. The Landlord also claimed that the floor was in good condition at the beginning of the tenancy but she was unsure of its age.

The Tenant argued that part of the flooring was damaged by the Landlord's repair men during the tenancy when they pulled out a dishwasher (which was not on wheels) a number of times to repair it and then moved it again to replace it. The Tenant also argued that during the tenancy rats chewed through a section of the flooring by the patio doors and that she brought this to the Landlord's attention in October of 2008. The Tenant further argued that the flooring in other areas of the kitchen was showing signs of wear and tear at the beginning of the tenancy.

Having regard to all of the evidence, and in the absence of a condition inspection report showing the condition of the flooring at the beginning of the tenancy, I find that there is insufficient evidence that the damage to the kitchen floor was caused by an act or neglect of the Tenant during the tenancy. Furthermore, I find that the Landlord accepted the condition of the flooring at the end of the tenancy when she inspected the rental unit with the Tenant. Consequently, the Landlord's application is dismissed without leave to reapply.

Tenant's Application:

Section 43(2) of the Act says that if a rent increase given by a Landlord complies with the Act and Regulations, a Tenant may not dispute it. The Tenant sought to recover

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alleged overpayments of rent for the period December 1, 2008 to the end of the tenancy as she argued that the rent increase that took effect on December 1, 2008 exceeded the amount permitted under the Regulations. However I find that rent increase set out in the Notice of Rent Increase dated August 7, 2008 did comply with the Regulations to the Act. In particular, the allowable increase for 2008 was 3.7% or \$50.88. As the Tenant's rent was increased by \$50.00, I find that it was a permitted increase and as a result, this part of the Tenant's application is dismissed.

In the absence of an agreement between the Parties that the Tenant would be compensated for her labour in making repairs and painting at the beginning of the tenancy, I find that there are no grounds under the Act or tenancy agreement for awarding the Tenant compensation and that part of the Tenant's application is dismissed.

Section 32(1) of the Act says (in part) that a Landlord must "provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and that makes it suitable for occupation by a tenant."

The Landlord argued that it was a condition of the Parties' tenancy agreement that the Tenant was taking the rental unit in "as is" condition; that is, subject to any problems. However, the tenancy agreement does not contain a term to that effect and even if it did, it would be of no force and effect because section 32(5) of the Act says that it is the responsibility of the Landlord to maintain and repair a rental unit whether or not a tenant knew of a breach by the Landlord at the time of entering into the tenancy agreement. This means that even if the tenant knew about the problems with the rental unit at the beginning of the tenancy, the Landlord still has an obligation to make any repairs necessary to make the rental unit fit for occupation.

I find it unlikely that the Landlord did not receive a copy of the report the restoration company issued which recommended the removal of mould damaged drywall and insulation from the rental unit. I make this finding in part having regard to the fact that the report was issued to the Landlord's attention. However, even if the Landlord did not receive the report as she claimed, I find that she was aware that the affected walls had mould and that the course of action recommended by the restoration company was to remove them. I note that in her letter to the Landlord dated July 31, 2008, (which the Landlord did not dispute receiving) the Tenant stated that while the dehumidifier would reduce the humidity in the rental unit, it would not address the mould already within the walls caused by the plugged rain gutters.

However, I find that there is insufficient evidence that the type of mould found in the rental unit was a health hazard. While the Report of the restoration company says

“emergency” there is nothing else in that report that states why the recommended removal of the affected walls was an emergency. The Tenant provided no other evidence to suggest that the “extensive mould” posed a health risk. I do find, however, that due to the Landlord’s failure to address or remove the source of the mould, it persisted and resulted in the Tenant having to take remedial steps to control it to the end of the tenancy. I also find on a balance of probabilities that a few of the Tenant’s clothes likely were damaged when they rubbed up against a closet wall that had mould. I further find that the amount of **\$100.00** is reasonable to compensate the Tenant for 2 damaged blouses and a jacket and award her that amount.

I find, however, that there is insufficient evidence that the Tenant’s mattress was damaged from touching a wall containing mould. In particular, the photograph provided by the Tenant shows that the damaged area was at the bottom of the Tenant’s mattress which would not have been in contact with the wall. Consequently, I find that the Tenant is not entitled to compensation for the damaged mattress and that part of her claim is dismissed.

I also find it unlikely that the Landlord did not know that there was a problem with the septic tank. The Landlord did not dispute that the septic tank had to be pumped out approximately 8 times in a 2 year period or roughly once every 3 months because it was overflowing. The Landlord’s evidence was that she believed it was reasonable to continue to maintain the septic tank in this manner. I find, however, that this was not a reasonable course of action. In particular, I accept the Tenant’s evidence that not only did she lose the use of the only bathroom in the rental unit approximately 8 times but that there was a continual smell of sewage and that this was likely a factor that caused or contributed to the rat infestation.

Although the Tenant provided no evidence that the raw sewage or rats were a health risk, I find that it is generally accepted knowledge that they were. In particular, I note that municipal health authorities consider both raw sewage and rats as health hazards. Consequently, I conclude that these two conditions alone created a health hazard to the Tenant and her children. While the Landlord may have taken steps to exterminate rats, I find that her failure to repair the septic tank rendered many of those efforts useless as is indicated by the fact that at the end of the tenancy the rat infestation was still classified as moderate to severe.

Section 7 of the Act says that if a party does not comply with the Act they must compensate the other party for any damage or loss that results. Section 28 of the Act says that a Tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance.



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Although the Landlord argued that the mould was not an ongoing problem, it is clear from the Tenant's correspondence to the Landlord that she brought the issues of the mould, rats and septic tank to the Landlord's attention frequently and on an ongoing basis from June 2008 to the end of the tenancy.

The Tenant sought compensation of \$100.00 for each month of the tenancy, however, there was no evidence that there were problems with rats and mould during the period July 2007 to May 2008. Consequently, I find that the Tenant is entitled to compensation of \$50.00 for each month or part month (of the period July 2007 – May 2008) for dealing with the septic tank overflowing and the odour it gave off for a total of **\$550.00**. I also find that the Tenant is entitled to compensation for the period June 2008 to the end of the tenancy due to a breach of the Landlord's duty under s. 32 of the Act to repair mouldy walls and the septic tank which together with the rat problem made the unit unfit for occupation. I also find that these problems caused or contributed to the Tenant's loss of the use and enjoyment of the rental unit under s. 28 of the Act.

I find that \$100.00 compensation for each month or part month is conservative considering the condition of the rental unit. Consequently, I find that the Tenant is entitled to a further award of **\$1,300.00** representing a 13 month period (June 2008 – July 2009) during which she had to live in the rental unit with mould, a rat infestation and sewage from a leaking septic tank. As the Tenant has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding.

Conclusion

The Landlord's application is dismissed. The Tenant's application is granted in part. A monetary order in the amount of **\$2,000.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: December 31, 2009.

Dispute Resolution Officer