



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened on an application by the tenants received on February 10, 2012 seeking monetary compensation for damage and losses arising from water intrusion into the rental unit.

Issue(s) to be Decided

The matter requires a decision on whether and in what amount the tenants may be entitled to compensation for the claims submitted.

Background and Evidence

This tenancy began on August 1, 2010 under a one year fixed term agreement, becoming a month to month tenancy thereafter. Rent was \$875 per month and the landlord held a security deposit of \$437.50.

During the hearing, the tenants gave uncontested evidence that there had been a water intrusion into the rental unit which they discovered at in September of 2011 and which subsequently resulted in the departure of one of their co-tenants shortly after.

In response, the property manager successfully petitioned the landlord to reduce the tenants' rent for October 2011 by \$300.

The water intrusion was subsequently found to be the result of a broken pipe in the wall of the rental unit, although the male tenant stated that he believed part of the subsequent mold development was also partly caused by residual water used to douse an earlier fire in the rental building.

As time passed, the tenants stated that work was not completed in a timely manner, delays they attribute to landlord negligence. However, the landlord's agent stated that the landlord had done everything in his power to have the repairs completed but that he had had to deal with delayed communication and attendance among his insurance company, the restoration company and the plumber called to repair pipes in the wall.

In any event, when repairs had not been completed in mid-December 2011, and the tenants had been alarmed by the amount of mold exposed in the opened walls, the property manager obtained the landlord's agreement to consider the tenancy at an end and find new accommodation into which the tenants moved on December 17, 2011.

The tenants now claim a rebate of one-third of the rent paid for November and December of 2011 due to the loss of facilities, \$1,456 for loss of a king sized bed due to the mold, and \$850 moving expense.

The landlord noted that the latter two claims were not valid as both would have been covered if the tenants had obtained contents and liability insurance as required by the rental agreement.

Analysis

As to the loss of facilities claimed by the tenants, section 27(2)(b) articulates the principle that that tenants are to be compensated for the loss of use of a service or facility.

I find the tenants' claim for abatement of one-third of the rent paid for November and December of 2011 is reasonable compensation for loss of the bedroom and bathroom, and the subsequent concern over mold, is fair and reasonable compensation and I award the full \$583.33 claimed.

As to the tenants claim for moving expenses and replacement of a bed, the property manager cited clause 9 of the rental agreement which states that:

"It is the Tenant's responsibility to purchase Tenant' Insurance. It will be the responsibility of the Tenant to provide proof of \$1,000,000 liability insurance within 30 days of occupancy. Failure to obtain insurance is considered a breach of this tenancy agreement and will result in a notice to end the tenancy."

The Tenant will be responsible for any and all loss as a result of the Tenant's failure to obtain insurance as required under this agreement."

The landlord's agent stated that replacement of the bed and moving expenses would both have been covered by standard insurance policies under the circumstances encountered in the subject tenancy.

I find that by failing to purchase the required insurance as they committed to do by signing the rental agreement, the tenants knowingly and with forewarning accepted the risk of the bed replacement and moving costs.

Therefore, this part of the tenants' claim is dismissed without leave to reapply.

Thus, in total, I find that the tenants are entitled to an award for \$583.33 in rent abatement for November and December 2011.

Conclusion

The tenants' copy of this Decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$583.33, for service on the landlord.

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: April 13, 2012.

Residential Tenancy Branch