



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNRT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order reducing rent for repairs, services or facilities agreed upon but not provided; a monetary order for the cost of emergency repairs; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and one of the landlords attended the hearing, and the landlord also represented the other landlord. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established that rent should be reduced for loss of use of a portion of the rental unit?
- Have the tenants established a monetary claim for the cost of emergency repairs?

Background and Evidence

TENANTS' EVIDENCE:

The first tenant (HM) testified that this fixed term tenancy began on July 1, 2021 and expires on June 30, 2022 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit as house-mates. Rent in the amount of \$4,500.00 is

payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$2,250.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family home, and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the rental home has 2 levels; a main level and basement. The basement flooded on November 14, 2021 and the tenants immediately notified the landlord. The tenants purchased a sump pump with the landlord's consent, and the landlord has not yet reimbursed the tenants the cost of \$298.74. A copy of the receipt has been provided for this hearing.

The basement has 1 bedroom for the tenant's son, a kitchen, bathroom, laundry room and a back room. The tenants were not able to use the bedroom at all until repairs were completed, and the kitchen was not accessible. In the beginning, the toilet in the basement was removed by a plumber. The floor in the laundry room required replacing, however the tenants had no other option but to continue using the laundry facilities. Also, blowers and dryers were placed in the basement for about 1 month which were noisy and required a lot of electrical cable. The tenants had to move their belongings from different sections of the basement for tradespersons, such as carpeting, which was done by the tenants sometimes, every other week. The duration of the loss of use of the basement was from November 14, 2021 to January 26, 2022 when all repairs were completed. Photographs and video evidence have also been provided for this hearing.

The rental home is 1932 square feet in total, and the basement is 827 square feet. The tenants made a request to the landlord on January 15, 2022 by email asking for a rent reduction of 40% of the monthly rent, and the landlord replied that the basement is 43% of the whole house. The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$4,648.74:

- \$298.74 for an Emergency sump pump;
- \$100.00 for the filing fee; and
- \$4,250.00 for a rent reduction.

The tenant testified that the claim is based on a reasonable portion of the house that the tenants were not able to enjoy, and the duration of the inconvenience was 2 months and 10 days.

The second tenant (TH) testified that the tenants could not use the kitchen. Further, the tenant needed the shower in the basement bathroom due to knee surgery and could

not lift into the bathtub in the upper level of the rental home. However, the toilet in the basement bathroom had been removed and was then broken by plumbers and replaced. The tenant is not certain how long it took to replace the toilet, however the tenant shuffled it off to the side. The tenants had to continue to use the laundry appliances, which were not available for about a week and then water subsided.

The tenant does not believe the tenants have been unreasonable, and continued to pay rent in full.

LANDLORD'S EVIDENCE:

The landlord testified that flooding was unprecedented in the Province, and only rain water, not sewage or any other health issue was caused.

The basement had hardly any furniture in it; not used like a normal family. The bedroom had a table and mattress, and the back room had a small table, chair and tools, and that room wasn't flooded. After the water had subsided, the tenants were able to use the back room and could watch TV. No damage was done to any of the tenants' furniture. The shower was usable, and the toilet after 2 weeks, and the laundry continued to be used. In December it was all dried out and usable.

The landlord also testified that the kitchen did not look like the photographs provided by the tenants. Things were only stacked up while flooring was being replaced, and not for the full time. There 2 humidifiers and 2 fans that did not hinder any movement, and the tenants could still access the fridge and microwave until flooring people arrived, which was delayed to mid-January due to availability issues. The tenants were asked to move some items to prevent damaging any of their property, but only when something was needed to be done. Contractors were not there all the time or every day.

The landlord also disputes the testimony of the first tenant with respect to the floor space of the rental unit. The floor area of the main floor is 1,393 square feet and basement is 1,172 square feet.

The landlords spent about \$7,000.00 in repairs, being \$5,000.00 for a draining system to prevent future flooding and \$2,000.00 for an insurance deductible. The basement now has new flooring, carpet, baseboards, paint in the bedroom, and is now more enjoyable than when the tenants moved in, which should be taken into account.

During the whole time, the tenants could move around in the basement, but the bedroom was the main problem, which is why the landlord did not agree to the tenants' request for a 40% reduction in rent.

The landlord does not dispute the \$298.74 claim for the cost of the sump pump.

SUBMISSIONS OF THE TENANTS:

The landlord has been on top of renovations required, but the tenants were hindered from full use of the basement. The landlord's effort and time to ensure it was restored as soon as possible is appreciated.

SUBMISSIONS OF THE LANDLORD:

The tenants are good tenants, and the landlord appreciates that there was some difficulty for them. The landlords spent a lot of money and made the rental unit better than when the tenants moved in.

Analysis

The landlord does not oppose the \$298.74 claim for the sump pump, and therefore I find that the tenants have established that part of the claim.

The only issue remaining to be decided is the amount by which the tenancy has been devalued. I accept that the landlord's position is that the rental unit is much nicer now than prior to the flooding, but I cannot take that into consideration because a landlord is required by law to provide and maintain the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. Since the flooding was not caused by the tenants, the landlord had an obligation to make the repairs.

I have reviewed all of the evidentiary material, however some of the photographs could not be opened. I have also read all of the emails exchanged by the parties, at least 1 of which indicates that copies of previous Decisions of the Residential Tenancy Branch are attached, but have not been provided for this hearing. The tenants claim 40% of the rent for the 2-month duration of repairs, and the landlord offered 25% in the emails. There is no question that the parties agree that some compensation is warranted; only quantum is in dispute.

The tenant testified that the amount of floor space in the basement is 827 square feet and the entire home is 1,932 square feet. The landlord disputes that, testifying that the main

floor is 1,393 square feet and the basement is 1,172 square feet, which would equate to a total of 2,565 square feet. My arithmetic shows that the tenants' estimate for the basement is about 42.8% of the entire rental home, and the landlord's estimate is about 45.7%. Rent is \$4,500.00 per month.

The landlord's position is that portions of the basement were available to the tenants throughout the 2 month period, and I agree. However, I also accept the testimony that things were moved from one area to another, by the tenants or others from time to time, which would obviously remove space in the other area(s). The toilet was usable some of the time, the bedroom was not usable for any of the time, the only parts of the kitchen that were usable were the microwave and fridge until the flooring was replaced, the laundry facilities continued to be used as normal, and after water had subsided the tenants could use the back room and watch TV. Further, there are always fans and humidifiers placed in flooded homes by restoration companies, which are also an inconvenience.

Although the square footage of loss of use is not the only consideration in determining quantum, considering the scope of the inconvenience, duration and square footage, I do not find that the tenants' claim is unjustified. I find that the tenants have established a claim of 40% of the monthly rent for 2 months and 10 days, or \$4,180.64 ($\$4,500.00 \times .40 = \$1,800.00 \times 2 = \$3,600.00$) + ($\$4,500.00 / 31 \text{ days in January} = \$145.16 / \text{day} \times 10 \text{ days} = \$1,451.61 \times .40 = \$580.64$) = \$4,180.64).

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

Having found that the tenants have established claims of \$298.74 for the sump pump, rent reduction totaling \$4,180.64 and recovery of the \$100.00 filing fee, I grant a monetary order in favour of the tenants in the total amount of \$4,579.38. I order that the tenants may reduce rent for future months by that amount until that sum is realized, or may file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,579.38, and I order that the tenants may reduce rent for future months until that sum is realized or may otherwise recover it.

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: May 13, 2022

Residential Tenancy Branch