



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC OLC RR

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation, an order that the landlord comply with the Act, and an order allowing the tenant to reduce the rent for repairs agreed upon but not provided. During the hearing the tenant clarified that he was not seeking an order that the landlord comply or a reduction in the rent; rather, he was seeking an order for repairs. It is clear in this case that the landlord understood the tenant's general complaints, and on that basis I amend the tenant's application to withdraw the claims for an order that the landlord comply and for a reduction in rent, and I add the claim that the landlord make repairs.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation as claimed?

Should the landlord be ordered to conduct repairs?

Background and Evidence

The tenancy began on August 1, 2007. The current monthly rent is \$355. On a Friday in July 2008, the landlord served the tenant with a handwritten note notifying him that as of the following Monday, there would be plumbers attending at the rental unit to carry out some necessary work. The plumbers drilled holes in the drywall behind the fridge, inside the kitchen cabinets, through the kitchen ceiling and inside the bathroom. The plumbers discovered that they would have to do additional work that was not anticipated. The tenant stated that the plumbers or other contractors attended at the

rental unit at least 20 times over a period of six to seven weeks, and the landlord only posted one notice. The tenant stated that as a result of the work that the plumbers did, significant amounts of dust and drywall mud were left and not cleaned up, and this impacted his health as he suffers respiratory problems and an allergy to dust. The tenant stated that he has headaches, nightmares and difficulty breathing. In support of his claim, the tenant submitted a doctor's note which indicates that the tenant suffers allergies. The tenant also called a witness who testified that he visited the tenant's apartment the day before the hearing and found dust on the bathroom flex hose and a handful-sized amount of dust behind the fridge. The tenant has claimed monetary compensation of \$500 for loss of quiet enjoyment.

The tenant stated that as of the date of the hearing, all of the other repairs have been done except a hole above the kitchen cabinetry. The tenant acknowledged that he received information from a City of Vancouver inspector that the landlord is not required to repair the hole above the kitchen cabinetry, but the tenant sought an order to have the hole repaired on the basis that the hole allows drywall dust into his apartment.

The landlord's response to the tenant's evidence was as follows. The tenant did receive a handwritten notice before the plumbers began their work, and the landlord believed that the one notice would suffice for 30 days. The work took much longer than it needed to because the tenant would not cooperate with the plumbers. The landlord was not aware of the tenant's allergies, but if the dust was such a problem then the landlord wondered why the tenant did not clean it up. The landlord questioned the value of the evidence from tenant's witness, as some time has passed since the work was done and the dust that the witness saw may have been a result of the tenant not cleaning his apartment. The landlord does not intend to carry out unnecessary repairs on what they described as a two-inch hole.

Analysis

In regard to the tenant's claim for compensation for loss of quiet enjoyment, I find that the tenant did not provide adequate evidence to establish that the work done by the plumbers directly resulted in the health problems he described. The doctor's note only provided evidence that the tenant suffers from allergies, and it did not even indicate what those allergies were. Further, the tenant did not take steps to remedy the problem, which he could have easily done by cleaning up the dust. However, I am concerned with the landlord's repeated interruption of the tenant's quiet enjoyment without providing written notice. Section 29 of the *Residential Tenancy Act* states that in most circumstances the landlord must not enter the tenant's rental without either the tenant's permission or written notice at least 24 hours and not more than 30 days before the entry, and the notice must provide both the reason for entering, which must be reasonable, and the date and time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. The landlord in this case was under the misapprehension that their handwritten note would not only suffice in the first instance, but that it would cover any further entry for a 30 day period on the one notice. I therefore find that the tenant is entitled to compensation for loss of quiet enjoyment in the reduced amount of \$50.

In regard to the tenant's application for a repair order, I find that the tenant did not provide adequate evidence to establish that the hole he described posed a risk to his health or safety. I therefore decline to order that the landlord carry out repairs.

Conclusion

The tenant is entitled to deduct \$50 from his next month's rent.

Dated October 23, 2008.

