

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** CNC MNDC FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearings. Both parties were represented in the hearing and had opportunity to be heard. The parties gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be decided**

- Should the Notice to End Tenancy for Cause be cancelled?
- Is the Tenant entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

### **Background and Evidence**

#### Facts on which the parties agree:

- The tenancy started on December 1, 2002. The Tenant and a co-tenant paid a security deposit in the amount of \$437.50 on November 6, 2002. There was no move-in inspection done at the start of the tenancy. The co-tenant moved out of the rental unit in March, 2004.
- The rental unit is approximately 2,000 square feet with 4 bedrooms, located in the back part of a house. The front part of the house is occupied by other tenants with the same Landlord.
- Monthly rent is currently \$1,000.00, due on the first day of each month.

#### Tenant's testimony and evidence

- On February 7, 2009, the Tenant wrote a letter to the Landlord requesting service and repair at the rental unit. The Tenant alleged that there was no problem between the Landlord and the Tenant until he gave written request for repairs. On March 1, 2009, the Landlord issued a Notice to End Tenancy for Landlord's Use. The Tenant advised the Landlord that the Act required her to provide him with one month's compensation. On March 25, 2009, the Landlord issued a Notice to End Tenancy for Cause, stating that the Tenant has caused extraordinary damage to the rental unit.
- The Tenant disputes that he has caused extraordinary damage, and states that he has made improvements to the rental unit during his tenancy, including: sealing and repainting floors that were damaged by a previous tenant; improvements to the landscaping; renovating a workshop on the rental property; repairing a ceiling that was water damaged by a previous tenant; purchasing a new smoke alarm to replace one that was faulty; properly affixing floor boards to reduce noise; replacing a defective faucet in kitchen; fixing the fence; and replacing old light fixtures.
- The Tenant testified that the house is not properly insulated against noise. In February, 2008, new tenants moved into the front part of the house. He had to stop sleeping in the master bedroom due to the noise from the tenants living in the front of the house. The Tenant spoke to the Landlord about his loss of peaceful enjoyment, but the Landlord did not do anything to remedy the situation. The front-of-house tenants moved out in February, 2009.
- There is mould growing throughout the house. The lino on the main floor of the house is laid directly onto the concrete and not properly sealed. The foundation of the house is not sealed. As a result, when it rains, it gets musty and there is mould growing on the walls. There is mould in the bathroom because the room is not properly ventilated. The fan blows the moisture up into the attic, but not outside the house.
- The Tenant has a medical condition that compromises his immune system. Mould is a toxin that adversely affects the Tenant's health. The Tenant provided photographic evidence of the mould. The Landlord has not done anything to remedy the situation, and advised the Tenant to regularly wipe down the walls

with bleach and use fungicides to get rid of the mould. The Tenant installed a ventilation system and uses filters to cut down on the growth of the mould and the humidity in the rental unit, but it is still persistent. The Tenant has not been able to find a roommate because of the mould problem.

- The original landlord for the rental unit was the Landlord's husband, who passed away. The original landlord told the Tenant that the carpet in the master bedroom was old, from the mid-1980s. The original Landlord had an agreement with the Tenant to replace the carpet in the living room, but it has not been replaced. The Tenant stated that the Landlord said she would not replace the carpet until the Tenant moved out.
- The rental unit has not been inspected or maintained by the Landlord for 6 years. The Landlord only started inspections and up-keep after the Tenant filed for Dispute Resolution.
- On several occasions, the Landlord entered the Tenant's home without notice and without permission.
- The door handles on the outside doors did not fit properly and the locks were broken. The Tenant told the Landlord, but she did not replace the locks. The Tenant had the locks replaced and provided the Landlord with a copy of the key.
- As a result of the stress of living in such poor conditions and being harassed by the Landlord, the Tenant was admitted to hospital for a period of one week.

#### Landlord's Testimony and Evidence

- The Landlord stated that 95% of the Tenant's testimony and evidence was not true.
- The Landlord stated that the photographs the Tenant entered into evidence are not pictures of the rental unit.
- The tenancy agreement had a "no pets" clause. The Tenant had a co-tenant who had a pet rat. The co-tenant's rat ruined the carpet in the master bedroom. The Tenant removed the carpet and threw it away without the Landlord's permission.
- The Landlord had agreed to give the Tenant an extra month without rent if the Tenant moved out, but the Tenant did not accept it.

- The Landlord stated that if mould is a problem in the rental unit, it is because the Tenant does not keep the house dry and clean. The Landlord believes the ventilation system was installed for another purpose.
- The Landlord testified that the Tenant did not inform the Landlord of water damage in the bathroom and as a result, costs to repair the damage are more than \$2,500.00.
- The Landlord testified that the Tenant is responsible for informing the Landlord of maintenance and repair issues in a timely manner, but the Tenant did not do so.
- The Landlord testified that the Tenant damaged the counter tops in the kitchen and changed the faucet in the Kitchen and two light fixtures without the Landlord's permission. The Landlord stated that the Tenant is not a licensed electrician and should not be removing or replacing electrical fixtures.
- The Landlord testified that the Tenant has put many small holes in the walls.
- The Landlord denied that the bathroom was not ventilated properly, and stated that the City of Victoria did an inspection of the property when it was built in 1985. The property passed the inspection.
- The Landlord testified that the Tenant did not mention anything about noise from the tenants in the front of the rental property. The Landlord stated that a neighbour complained about noise, and as a result the Landlord gave the tenants a verbal warning in July, 2008, and a written warning in November, 2008, about noise violations.
- The Landlord denied saying that she would wait until the Tenant moved out before she replaced the carpet.
- The Landlord testified that the Tenant has removed closet doors in the bedroom without the Landlord's permission.
- The Landlord stated that she had given the Tenant a Notice to End Tenancy for Landlord's Use, but when she inspected the rental unit and saw extraordinary damage, she decided to issue a Notice to End Tenancy for Cause.

#### Tenant's reply to Landlord's testimony

- The Tenant stated that he has removed the closet doors, because they had fallen off their tracks, but he still had the doors and would replace them before moving out of the rental unit.

#### Tenant's Witness DJ's testimony

- The Witness was the Tenant's co-tenant when the tenancy started.
- The Witness testified that the carpets in the living room were in need of replacing when he and the Tenant moved into the rental unit.
- The photographs provided into evidence by the Tenant are photographs of the rental unit and show true depictions of the rental unit's state of disrepair.
- There was no mould in the rental unit when he and the Tenant first moved in. The mould appeared approximately 6 months after they moved in.

#### Tenant's Witness KT's testimony

- The Witness has known the Tenant for 10 years.
- The Witness was present at the rental unit when the Landlord did an inspection on March 20, 2009, and noticed visible signs of mould: on the living room floors; the ceiling and wall of the master bedroom; outside at the back of the house; along the baseboards. There was evidence of mould in the bathroom, but it was covered with a powdery substance.
- The photographs provided by the Tenant are definitely of the rental suite.
- The Tenant has removed the ducting and ventilation system in the living room at the request of the Landlord, with no damage to the walls.

#### Analysis

The parties provided a large amount of written material into evidence. Although I did not reference all of the evidence before me in this decision, I have considered it. This is the Tenant's application. The Landlord did not file an Application for Dispute Resolution, and therefore I have not considered the merits of any of the monetary claims the Landlord made during the Hearings.

Following a thorough review of all of the evidence presented by the parties and the applicable legislative provisions, I find as follows:

The Tenant did not cause extraordinary damage to the rental unit. The Notice to End Tenancy for Cause is cancelled and the tenancy remains in full force and effect.

There was contradictory testimony as to whether the Tenant made a noise complaint to the Landlord about the tenants in the front suite. There was contradictory testimony with respect to whether the Tenant verbally notified the Landlord of repairs required prior to February, 2009. I prefer the Tenant's testimony at the Hearing. The Landlord testified that the photographs provided by the Tenant were not photographs of the rental unit. The Tenant's Witnesses corroborated the Tenant's testimony that the photographs were photographs of the rental unit.

Based on the testimony and evidence of the Tenant, the Tenant's Witnesses, and the Landlord, I find that the Landlord has breached Section 32(1)(a) of the Act by failing to provide and maintain the rental unit in a state of repair that complies with the health, safety and housing standards required by law. Before March, 2009, the Landlord had not made any inspections or repairs, or done any maintenance on the rental property for years.

The Tenant applied for a monetary order of \$1,000.00 for loss of peaceful enjoyment. I award the Tenant damages for loss of peaceful enjoyment in the amount of \$600.00, comprised of \$50.00 per month for 12 months.

The Tenant applied for a monetary order in the amount of \$2,000.00 for compensation for lack of maintenance of the rental unit. I award the Tenant a \$2,000.00, comprised of \$500.00 per month from the date the Tenant first gave the Landlord written notice of repairs required, including addressing the mould issue.

The Tenant applied for a monetary order in the amount of \$1,500.00 for stress. I dismiss this portion of the Tenant's claim, as unproven.

The Tenant has been partially successful in his claim and is entitled to recover the cost of the filing fee from the Landlord.

The Tenant has established a total monetary claim in the amount of \$2,650.00. Pursuant to Section 72(1) of the Act, I order that the Tenant may deduct this amount from any rent due to the Landlord.

I find that the Landlord is required under the Act to repair the moisture problem. I also find that the Landlord is required under the Act to immediately take whatever steps are recommended by a professional mould specialist to remove the proliferation of mould and remedy the cause. I find that the monthly rent being paid by the Tenant must be reduced until the above repairs are completed. Accordingly I find that the rental rate for this unit effective August 1, 2009, will be \$500.00 per month (prior to the Tenant deducting any of his monetary claim) unless and until the Landlord has fully resolved the moisture problem, removed the mould growth and taken adequate measures to prevent the mould from reappearing.

In arranging for these repairs, the Landlord will give the Tenant 24 hours written notice as specified in the Act to access the rental unit.

If the Landlord fails to finish the repairs on or before October 1, 2009, the Tenant is at liberty to make a further Application for Dispute Resolution.

### **Conclusion**

The Notice to End Tenancy for Cause issued March 25, 2009 is cancelled. The tenancy remains in full force and effect.

I hereby order the Landlord to resolve the moisture problem in the rental unit, remove the mould growth and take adequate measures to prevent the mould from reappearing by October 1, 2009. If these repairs are not concluded by October 1, 2009, the Tenant is at liberty to apply for further Dispute Resolution.

Further to Section 67 of the Act, I find the Tenant has established a monetary order against the Landlord in the amount of \$2,650.00. Further to Section 72(1) of the Act, I hereby order that the Tenant is entitled to deduct his monetary order from rent due to the Landlord.

Further to Section 67 of the Act, I order that the Tenant is entitled to a rent reduction in the amount of \$500.00 per month effective August 1, 2009. This rent reduction is in effect until the Landlord resolves the moisture problem in the rental unit, removes the mould growth and takes adequate measures to prevent the mould from reappearing.

Date of Decision: July 10, 2008

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