Dispute Resolution Services

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

Decision

Dispute Codes: RP, LRE, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order that the landlord perform repairs, an order restricting the landlord's access to the rental unit and a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the tenant acknowledged that on July 24 a front porch light had been repaired and the latching mechanism on the door had been repaired. The tenant acknowledged that these were the only two items that required repair. As the repairs have been addressed, I consider the claim for an order that the landlord perform repairs to have been withdrawn.

I note that the tenant asked that I make a number of findings related to events which have taken place during the tenancy. In this decision I have made only the findings of fact which were necessary to adjudicate the matter before me.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the tenant entitled to an order restricting the landlord's access to the rental unit?

Background and Evidence

The parties agreed that on June 9, 2007 they entered into a tenancy agreement whereby the tenancy would begin on June 15 and continue for a fixed term of one year, after which it would continue on a month-to-month basis. The tenant pays $2,500.00 per month in rent. The rental unit is on the upper floor of a residence in which the lower floor is a separate rental unit. The parties further agreed that the landlord gave the tenant a single key to one door of the rental unit on June 11 and gave him permission to

move his belongings in before the start of the tenancy as he had to have vacated his previous home no later than June 15.

The tenant testified that the landlords illegally entered the rental unit without his permission on June 12 or 13. The tenant testified that he entered the rental unit on June 13 and found the landlords sleeping therein. The landlords testified that they had learned that a number of unoccupied homes in the area had been broken into and they stayed overnight in the unit because they were concerned about security.

Window coverings. The tenancy agreement provides that window coverings are included in the rent. The parties agreed that at the time the tenancy agreement was entered into, the landlords advised the tenant that custom blinds would be ordered and had not yet been installed. The tenant testified that it was his understanding that the blinds would be installed prior to June 15. The blinds were installed approximately three weeks later, on July 9. The tenant testified that after June 11 but prior to June 15 he sprayed the windows in the rental unit with a starchy spray that provides an opaque covering in order to gain privacy. The spray is specifically designed for this purpose. Prior to June 15 the landlords discovered that the windows had been sprayed and they cleaned the spray off of the woodwork around some of the windows and also cleaned it off a stained glass arch. After June 15 the landlords provided the tenant with a peel and stick film which could be applied to the windows to offer privacy. The landlords testified that they asked the tenant to remove the spray and apply the film. The landlords further testified that they would have applied the film themselves, but that the tenant offered to do it. The landlords testified that the tenant removed the residue from the spray that had been used on the windows but that the residue remained on some of the window trim. The tenant testified that the windows were not clean at the time he moved in as many had the original manufacturer's stickers on them and some had a residue from construction compounds. The landlord expressed frustration that the tenant had not brought his concerns about the windows to their attention at the beginning of the tenancy and had waited for two years to bring his claim. The tenant seeks an order compensating him for the cost of the window spray and for his labour in installing the spray and film as well as for loss of quiet enjoyment. The tenant further seeks a window cleaning budget to compensate him for cleaning the windows which were not clean at

the beginning of the tenancy or alternatively, an order that he does not have to clean the windows at the end of the tenancy.

Illegal entry. The tenant testified that on July 9, when the installer arrived to install the blinds, the landlords entered the rental unit and removed the film from several windows. The tenant testified that he had been with the installer at the residence and that the installer caused a bookshelf to fall against a wall, damaging the wall and the tenant's table. The tenant testified that at one point he left the installer alone in the unit. The tenant testified that when he returned, he found that the film had been removed from several windows. When he questioned the installer, the installer advised him to speak with his landlords. The tenant emailed the landlords and asked them why they had entered the unit and removed the film. The landlords responded by saying that they had asked the tenant to remove the film and that he had failed to do so and stated that they had been on the property to permit another party access to a different rental unit. At the hearing the landlords testified that they did not enter the rental unit and strenuously denied having removed the film. The landlords suggested that the blinds installer may have removed the film. The tenant seeks an order compensating him for loss of quiet enjoyment for this occasion and for the June 13 occasion and a further order compensating him for the loss of privacy he suffered as a result of the film having been removed. The tenant further seeks an order that the landlord's access to the rental unit be restricted.

Table repair. The tenant testified that when he spoke with the landlord about his table having been damaged, the landlord told him to speak to the installer on her behalf and ask him to repair the table. The tenant further testified that he spoke with the installer as directed and the installer advised that while he would repair the wall, he would not repair the table. The landlords testified that they told the tenant that he should deal directly with the installer about compensation for the damage. The tenant seeks compensation for the damage to the table and loss of quiet enjoyment.

Storage shed/Bike. The tenant claimed that at the outset of the tenancy the landlord promised to provide a storage shed. The tenant testified that the landlord failed to do so and that the tenant had to construct two different sheds. The tenant testified that he stored a bicycle in the shed he constructed and that the bicycle was stolen. The

landlords denied having promised to provide a shed and testified that while there had been some discussion about the tenant building a shed, but that the landlords had never promised to absorb the cost. The tenant seeks recovery of the cost of the second storage shed, compensation for his labour, recovery of the cost of the bicycle and loss of quiet enjoyment.

Truck fire. The parties agreed that in late November 2008, a truck belonging to the tenant who lived in the lower floor of the residence caught on fire. The truck was unlicensed and required repair. The tenant testified that prior to the fire, he complained to the landlord that the truck smelled of gasoline and expressed concern about it being in the driveway. The tenant theorized that the truck may have been fire-bombed. The landlords testified that they have not seen the police report which was generated as a result of this incident and are not aware of the cause of the truck fire. The tenant seeks compensation for the damage to his vehicle from the fire and an award for loss of quiet enjoyment due to the anxiety the incident created for his family as well as the soot and remnants of the fire which were not completely cleared away until April 2009.

Drunken guest. The tenant testified that shortly after the truck fire, he found a drunken man peering in his windows. The man referred to the tenant who lived on the lower floor by name. The tenant testified that he telephoned the landlords and advised them that a guest of the tenant on the lower floor was peering in his windows. The landlords contacted the tenant on the lower floor who retrieved his guest. The tenant seeks an award for loss of quiet enjoyment.

Unpaid utilities. The parties agreed that at the outset of the tenancy it was agreed that the tenant would pay 70% of the utilities for the residence and the tenant on the lower floor would pay 30% of the utilities. There is just one meter which is shared by both units. The tenant testified that the tenant on the lower floor failed to pay some of the utilities. The tenant further testified that the tenant on the lower floor often had guests stay for extended periods and frequently left windows and doors open in cold weather, which caused the amount of the utilities to increase. The tenant purported to raise the share of the tenant on the lower floor to 35% of the total cost of gas to heat the unit. The tenant on the lower floor vacated the lower unit in April 2009 and new tenants moved into that unit at the end of April. The tenant calculated that the previous and

current tenants on the lower floor owe him a total of $168.36 for utilities and interest for late payments. The tenant testified that during the period in question, he received a total of $377.28 in utility payments from the former lower tenant. The landlords testified that they tried to get an invoice from the tenant so they could pass the bill on to the lower tenant, but could not get one before the time they had to return the lower tenant's security deposit. The landlords calculated that the lower tenant owed $92.14. The tenant claims the amount of utilities unpaid by the lower tenant as well as compensation for loss of quiet enjoyment due to the landlord's refusal to pay the bills. The table which follows shows the invoice amounts and billing periods.

Utility	Billing period or date meter was read	Invoice amount
Terasen Gas	September 17	$ 50.98
BC Hydro	July 18 – September 17	$ 96.37
Terasen Gas	October 17	$ 122.83
Terasen Gas	November 18	$ 130.18
BC Hydro	September 18 – November 18	$ 136.86
Terasen Gas	December 16	$ 156.94
Terasen Gas	January 16	$ 225.92
BC Hydro	November 19 – January 19	$ 160.27
Terasen Gas	February 16	$ 201.89
Terasen Gas	March 18	$ 170.55
BC Hydro	January 17 – March 18	$ 110.98
Terasen Gas	April 17	$ 126.66
Terasen Gas	May 15	$ 87.15
BC Hydro	March 19 – May 15	$ 82.24
Terasen Gas	June 16	$ 47.11
	Total:	**$1,906.93**

Back door. The tenant testified that a back door to the rental unit would not stay shut unless it was deadbolted. The tenant testified that he advised the landlord on numerous occasions starting early in the tenancy but the door was not repaired until a few days before the hearing. The landlords testified that when the tenant first brought the problems with the door to their attention they adjusted the door and it worked well for a while after that, but that it was affected by the weather and would have intermittent problems wherein the latch would not hold. The tenant argued that the problems were not intermittent. The tenant seeks compensation for loss of enjoyment.

Dog. The tenant testified that the previous lower tenant obtained a dog during his

tenancy which was aggressive and defecated and urinated on the lawn. The tenant provided photographs of the lawn and testified that his children were unable to play in the yard due to the dog's waste. In his statement, the tenant indicated that he had to remind his children that even if they could not see urine or feces, the remnants thereof were probably still on the lawn, rendering it unsanitary. The landlords acknowledged that the tenant made them aware that the lower tenant's dog was defecating on the lawn and testified that they spoke with the lower tenant on several occasions to remind him to pick up after his dog. The tenant claims loss of quiet enjoyment of the yard area.

Dishwasher. The tenant testified that the dishwasher in the rental unit intermittently stopped working starting in August 2008. The tenant testified that he brought the problem to the landlord's attention numerous times between August and May 2009 when the dishwasher flooded the kitchen. The tenant testified that during that time period, he would occasionally have to run the dishwasher several times as it would occasionally run dry cycles or not operate properly. After the flooding incident in May, the dishwasher was repaired by the tenant, who was reimbursed in full by the landlords. The landlords testified that they were of the understanding that it was a minor problem, particularly since the dishwasher was not continuously inoperable. The tenant seeks compensation for loss of quiet enjoyment.

Porch light. The tenant testified that he advised the landlord in February that one of three porch lights, all operated from the same switch, was not operating properly. In the email the tenant indicated that he was afraid that a short in the wiring might cause a fire. The landlords responded by email the next day advising the tenant to keep the porch light off until they could get it looked at. The landlords testified that after receiving this email, they examined the porch light and tightened the bulb. The porch light appeared to operate well, so the landlords thought it was repaired. The tenant claims for loss of quiet enjoyment for the time in which he was unable to use the porch light.

Analysis

The tenancy agreement is clear that the tenancy was to commence on June 15, 2007. Although the landlords provided the tenant with keys on June 11, I find that this was a gratuitous gesture and that the tenant's contractual rights did not commence until June

15 and therefore he had no right to expect that he had exclusive occupation of the rental unit prior to June 15. Accordingly I find that the landlords' entry into the unit prior to June 15 was not an unauthorized entry. I further find that the landlords' act of cleaning windows prior to June 15 does not constitute any improper or unauthorized activity.

Window coverings. I find that the landlords were obligated under the tenancy agreement to provide window coverings. However, the tenancy agreement does not specify that the landlords had to provide blinds. The landlords provided and the tenant accepted the window film as a temporary covering until the blinds could be installed. I find that the landlords met their obligation to provide window coverings. I further find that the tenant had an obligation to bring the unclean windows to the attention of the landlords and that he failed to do so, thus depriving them of the opportunity to rectify the situation. I further find that it was open to the tenant to request that the landlords apply the film to his windows but that he chose to perform this task himself. It is my finding that the tenant's claim for compensation for cleaning should be barred by his failure to advance it in a timely way. I find that the doctrine of laches should be applied to bar this claim. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the tenant's inordinate delay in asserting this claim and the prejudice to the landlord that has resulted from his failure to make a timely objection warrants the denial of this claim. The tenant's claims for compensation for labour and materials and loss of quiet enjoyment (identified as claim 1 in his statement) are dismissed. The tenant's claim for a window cleaning budget or an order that he does not have to clean the windows at the end of the tenancy (identified as claim 2 in his statement) is dismissed.

Illegal entry. I am not satisfied that the landlords entered the rental unit on July 9, 2007. Although the landlords did not specifically deny having entered the unit in their email of that date, they did specifically deny having entered at the hearing. I find that the tenant is not entitled to recover any amount for the loss of privacy resulting from the removal of the film on the windows. It was open to the tenant to request in 2007 that the landlords provide more film to give him the privacy he needed. Instead, the tenant chose to suffer what he termed as a lack of privacy inconvenience and anxiety. I find that the doctrine of laches operates to bar this claim. I find that the tenant has not proven on the balance

of probabilities that the landlord entered the unit on July 9. It is entirely possible that the installer removed the film. The tenant alleged that the landlords entered the unit on two occasions without authorization. The first entry on June 13 was prior to the time that the tenant had a right to exclusive occupancy of the home as discussed above. I have found that the second allegedly unauthorized entry has not been proven to have occurred. As there are have been no further allegations of unauthorized entry, I find that the tenant is not entitled to an order restricting the landlord's access to the rental unit. The tenant's claim for that order is dismissed as are the tenant's claims for compensation for the removal of the film and for loss of quiet enjoyment as a result of the landlords' entry.

Table repair. I accept that the tenant's table suffered some damage, albeit minimal, from the installer's actions. However, again I find that the doctrine of laches operates to bar this claim. Had the tenant acted quickly and asked the landlord to pursue the installer or make a claim against him, the landlord may have been able to successfully negotiate some sort of compensation. The tenant chose not to act within a reasonable time, but waited for two years to address the issue. I note further that the tenant provided no proof of the value of the table. The tenant's claim for compensation for the damage to the table and for loss of quiet enjoyment is dismissed.

Storage shed/Bike. I find that the tenant has not proven that the landlords promised to provide a shed. The tenancy agreement does not indicate that a shed is included in the cost of the rent and the parties have very different recollections of conversations which took place surrounding the tenant's construction of a shed. I find that the claim for the stolen bicycle is too remote in any event. The tenant's claims for compensation for labour and materials and for the value of the bicycle and loss of quiet enjoyment are dismissed.

Truck fire. In order to be successful in his claim for compensation for damage and loss resulting from the truck fire, the tenant must prove that the landlords were negligent in permitting the truck to be on the property. I find that the tenant has not proven that the landlords should have known either that the truck posed a fire hazard or that the landlords should have known that the tenant on the lower floor had acquaintances who may have fire-bombed the truck. While the tenant provided one email sent to the

landlords within a week of the fire advising of the soot and debris, he provided no supporting evidence to show that he made the landlord aware that the soot was an ongoing problem. I find that the tenant has not proven on the balance of probabilities that he made reasonable efforts to advise the landlords of the problems with the soot. The tenant's claim for losses resulting from the truck fire is dismissed.

Drunken guest. The tenant's claim for loss of quiet enjoyment resulting from the drunken guest of the tenant on the lower floor is dismissed. The tenant contacted the landlords who acted immediately and effectively to rectify the situation, which apparently did not recur. I find that the landlords acted quickly and appropriately.

Unpaid utilities. Residential Tenancy Policy Guideline #1 provides as follows on p. 1-9: "If a tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills." The landlords have a contract with the lower tenants and with the tenant in this action. The tenant does not have a contractual relationship with the lower tenants and therefore has no way to compel them to pay their share of the utility bills, which presumably is part of their tenancy agreement. The tenant may make a claim against the landlords for any portion of the bills which are left unpaid by the lower tenants and the landlords may in turn make a claim against the lower tenants for any portion of the bills they have failed to pay. Based on the invoices provided by the tenant and summarized above, I find that the landlords are liable for 30% of the total invoices which amounts to $572.08. As the tenant has acknowledged having received $377.28 from the previous lower tenant, **I award to the tenant the balance owing of $194.83**. I note that the tenant also entered into evidence a BC Hydro bill for the billing period from May 16 – July 16 which is not due until August 10 and a Terasen Gas bill based on a meter reading taken on July 16 which is not due until August 7. I have not taken those bills into account as they are not yet due. I further note that while the tenant argued that the bill owing by the lower tenant should have been reapportioned from 30 – 35%, he did not include this reapportionment in his breakdown of his loss of quiet enjoyment claim. However, I would have denied a claim for reapportionment had one been made as I

accept that the lower tenant was occupying just 25% of the available area in the residence and I am not persuaded that leaving the doors and windows open would have made such a significant impact as to require a reapportionment. I dismiss the tenant's claim for compensation for loss of quiet enjoyment resulting from his attempts to collect the bills. The tenant could have acted earlier to bring an application for dispute resolution to compel the landlord to pay the outstanding bills.

Back door. In the same way, the tenant's issues with the door could easily have been the subject of a dispute resolution hearing at a much earlier date. Instead, the tenant chose not to act and to make a claim for compensation. I am not satisfied that the tenant made the landlords aware that the earlier repair had not been effective and further find that the inconvenience caused by the door was not to a degree which would attract compensation. I dismiss the tenant's claim for compensation for loss of quiet enjoyment due to the problematic door.

Dog. I accept that the previous lower tenant's dog defecated and urinated in the yard on occasion. However, I find that the tenant has not proven that it was an ongoing problem and I am not satisfied that it should have caused him to lose the use of his yard. I find the tenant's refusal to allow his children to play in the yard because the dog had at one time defecated there to be unreasonable, particularly as the yard was not fenced and could have been accessed by any number of pets or wild animals. I dismiss the tenant's claim for loss of quiet enjoyment of the yard.

Dishwasher. I accept that the tenant brought the problem with the dishwasher to the attention of the landlords on a number of occasions. I find that the landlords should have known that a dishwasher which malfunctioned repeatedly could cause flooding at some point. I find that the tenant is entitled to compensation for the loss of quiet enjoyment resulting from the flood. However, I find that the tenant's claim is excessive. **I find that $50.00 will adequately compensate the tenant and I award him that sum.**

Porch Light. I find that when the landlords first learned that the porch light was not operating properly, they acted reasonably to repair the light and when it worked after they tested it, they were reasonable in assuming that the light had been repaired. I am not persuaded that the landlords had sufficient cause to believe that further repair was

required until they received the details of the tenant's claim. I dismiss the tenant's claim for loss of quiet enjoyment for lack of a porch light.

Because the tenant has been successful in part, I find it appropriate to award one half of the $50.00 filing fee paid to bring this application. **The tenant is awarded a total of $269.83** which represents $194.83 for unpaid utilities, $50.00 for loss of quiet enjoyment resulting from the dishwasher flood and $25.00 for the filing fee. The tenant may deduct this sum from future rent owing to the landlord.

Conclusion

The tenant is awarded $269.83.

Dated July 31, 2009.