



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

FINAL DECISION AND REASONS

Dispute Codes

CNC, MNDC, OLC, ERP, RP, FF, OPC, MNSD

Introduction

This was a reconvened cross-application hearing.

An interim decision was issued on July 13, 2009 in which I decided to cancel the notice to end tenancy for cause issued by the landlord on May 22, 2009. The hearing was reconvened to consider the balance of the claims made by each party. The parties were reminded that they continue to provide testimony under oath.

Preliminary Matter

The landlord testified that English is not his first language and that he has difficulty following the conversation unless we speak slowly. At the start of the hearing it was agreed that the testimony and questions would be delivered slowly, so as to accommodate the landlord. The landlord agreed that if he was having any problems understanding the conversation he would interrupt and inform the tenant and dispute resolution officer. At one point during the hearing I asked the tenant to keep the pace of his testimony in mind. At no time during the hearing did the landlord indicate that he experienced difficulty understanding. The landlord was asked if he had considered making arrangements for an interpreter for this hearing and he had not.

Issues to be Decided

Must the landlord comply with the Act by making emergency repairs and repairs to the rental unit?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the tenant entitled to compensation in the sum of \$350.00 per month, since May 2009?

Is the landlord entitled to compensation of \$250.00 for garbage removal?

Is either party entitled to filing fee costs?

Is the tenant entitled to hearing preparation costs in the sum of \$129.79?

Background and Issues to be Decided

During the hearing the parties came to an agreement in relation to the end of this tenancy. The landlord accepted the tenant's offer to vacate the rental unit by October 31, 2009 at 1:00 p.m. and agreed that no further rent would be payable by the tenant.

I then heard testimony in relation to the tenant's claim for compensation in the sum of \$350.00 per month, since May 2009 when he requested the landlord complete repairs to the rental unit. The tenant referenced text messages submitted by the landlord as evidence that he had made the landlord's agent aware of repairs that were needed to the rental unit. Evidence includes messages sent to the landlord's agent on May 11, 2009 indicating that repair work has been initiated and requesting further repair. One message states the tenant has been showering at the community centre for one week as they do not have use of a bathroom.

Evidence submitted include copies of City of Vancouver, By-law Compliance Division Orders; issued to the landlord on May 4, May 6 and May 28, 2009. The first two Orders directed the landlord to remove refuse that was on the property and to repair the roof and fence. The May 28 Order directs the landlord to complete a number of repairs to the rental unit that are required as a result of contraventions to the Standards of Maintenance By-law. The Ordered repairs to be completed by July 10, 2009 included:

- repair bathroom drain so water drains properly;
- repair bathroom tiles and wallboard; repair or replace bathroom cupboard;
- repair and paint bedroom ceiling;
- repair living room window;
- repair kitchen sink wall;
- repair the sink;
- repair or replace the rear entrance door hardware;
- repair or replace the sheathing on the underside of the first floor bump-out;
- repair the stairway guardrail;
- repair the awning overtop;
- repair the exterior light overtop;
- repair and replace the flooring of the front porch.

The landlord was also to remove garbage from the yard and to make roof and fence repairs by July 10, 2009. The tenant confirmed that the garbage was removed but that no repairs have taken place. The landlord confirmed that he will not be completing any repairs.

The tenant testified that he has now made repairs to the bathroom so that it is functional. The tenant testified that the garbage was reported to the City of Vancouver by a neighbour and that the garbage had been inside the garage and the side of the garage since the tenancy began in 1993. The tenant stated he had placed a tarp over the garbage, and that only an old metal bed frame belonged to the tenant. The tenant estimated that it would cost \$20.00 to haul the bed frame to the recycling centre.

The landlord testified that it is not reasonable to have left the garbage on the property throughout the term of the tenancy and that the tenant has not taken proper care of the property.

Analysis

The parties have agreed that this tenancy will terminate effective October 31, 2009 at 1:00 p.m. The tenant will owe no further rent to the landlord and will make no further rent payments to the landlord, including August rent that was due on August 1, 2009. As the parties have made this agreement I also find that the tenant must vacate the

rental unit by October 31, 2009 at 1:00p.m. and that the tenant does not owe the landlord any further rent, up to October 31, 2009.

I have considered the landlord's claim for garbage removal costs and find, on the balance of probabilities that this garbage, outside of the bed frame, was present on the property since the start of the tenancy. There is no evidence that the landlord gave the tenant instructions at any point during this long-term tenancy, to remove refuse on the property and it was not until a neighbour complained to the City that an Order was issued to remove the garbage. I find the tenant's testimony that he did own the bed frame convincing and that it supports the tenant's contention that he was not responsible for the remaining garbage. I find that the tenant is responsible for costs of \$20.00 for removal of the frame and dismiss without leave to reapply the balance of the landlord's claim for garbage removal costs.

There is no dispute that this rental unit requires repairs; as ordered by the City of Vancouver. The landlord testified that he can not afford repairs and will not be completing the repairs. The tenant has provided evidence that in May 2009 the landlord's agent was aware of the problems, which included the lack of use of a bathroom. The tenant has testified that the bathroom was only made functional recently, at his own expense. The tenant has requested \$350.00 per month as compensation for the loss of use of the bathroom and the failure of the landlord to complete required repairs. Section 32 of the Act provides:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) **complies with the health, safety and housing standards required by law, and**

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(Emphasis added)

The landlord failed to comply with the Orders of the City of Vancouver or to adequately respond to the tenant's concerns issued in May 2009. The landlord testified that he is in Hong Kong and that he has no alternative but to come to a settlement; however, I find that despite distance, the landlord continues to be bound by the requirements of the Act. I find that the tenant is entitled to compensation from May to June 2009, in the sum of \$1,050.00 due to the landlord's breach of section 32 of the Act.

The tenant has claimed compensation for costs related to preparation for the hearing. I find that the tenant's claim has merit and that the tenant is entitled to filing fee costs; however, I dismiss without leave to reapply the request for other costs incurred in preparation for the hearing.

During the hearing the tenant was provided with several contact phone numbers for the landlord's current agent in Vancouver.

Conclusion

The parties have come to an agreement that this tenancy will end by October 31, 2009 at 1:00 p.m. The parties also agreed that the tenant will pay no further rent, including the rent owed for August.

Based on the above agreement I find that the Landlord is entitled to an Order of possession effective October 31, 2009 and, as provided by section 62(3) of the Act, I have issued an Order of possession to the landlord. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the tenant has established a total monetary claim of \$1,100.00 comprised of compensation and the \$50.00 fee paid for this application, less the \$20.00 cost for removal of the bed frame and, therefore; grant the tenant an Order in the sum of **\$1,080.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I have dismissed without leave to reapply the tenant's claim for costs related to preparation for this hearing.

I have dismissed without leave to reapply the balance of the landlord's claim for garbage removal costs and retention of the tenant's deposit paid. The deposit paid shall be disbursed as required by section 38 of the Act.

This decision has no bearing on any action that the City of Vancouver may choose to take related to enforcement of the Orders they have issued.

Dated: September 1, 2009.

Dispute Resolution Officer