



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RP, RR, FF, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; for a rent reduction until the necessary repairs are completed; and to recover the filing fee from the landlord for the cost of this application.

The parties attended the conference call hearing, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence. All evidence has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order reducing rent until repairs are completed?

Background and Evidence

This month-to-month tenancy began on October 1, 1991 and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 is payable in advance on the 1st day of each month, and there are currently no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$575.00.

The tenant testified that the rental unit is a 34 year old house, and she has been renting it for 19 years. She further testified that since filing the Tenant's Application for Dispute Resolution, the landlord has completed a number of repairs to the house. The broken fence has been replaced but alot of debris was left behind, such as lumber, the old gate and a wheel barrel. An extension ladder was left there by a tradesperson about 5 years ago and no one has removed it. She further testified that the stucco is well-worn and the house has never been painted. The tenant did some caulking in cracks in seams, gaps, holes and around windows. The inside of the house has never been painted during the tenancy.

The tenant also testified that the garburetor has been repaired, but the technician who completed the repair stated that there is no ground wire and an electrician will have to look into it.

The tenant further testified that the garage door opener worked when she moved into the rental house, but she told the landlord about 15 years ago that it doesn't work, and it still has not been repaired. She further wrote letters to the landlord asking for the repair.

Earlier this month, the landlord had holes in the stucco patched and a courtyard wall removed but the tradesperson left behind white paint dripping on the back porch, driveway and walls. Further, the furnace has only been serviced 3 times, the ducts were cleaned once, and the chimney has only been cleaned twice during the tenancy. Also, the landlord had the gutters cleaned, but the person who cleaned them did not clean the outside of them and did not ensure they were clear of debris by running water through a hose down the gutters. She stated she can see the gutters from a window and did not see the person run the hose through them.

The tenant also provided a copy of a letter dated March 19, 2007 that she sent to the landlord. That letter requests repairs and painting inside and out and advises the landlord that the stucco is wearing causing moisture to enter the house causing mould and damp carpets. The letter also states that these issues were pointed out to the landlord during a home inspection a year prior.

The tenant is claiming 8 hours @ \$30.00 per hour, or \$240.00 for fixing the fences and gate prior to the date the landlord had them replaced. She further claims 100 hours @ \$30.00 per hour, or \$3,000.00 for scrubbing walls to remove mould. She further testified that she had to repair the sliding glass door by removing it and replacing the wheels, being 2 hours @ \$30.00 per hour, or \$60.00. The tenant further claims 10 hours @ \$30.00 per hour, or \$300.00 for chalking holes and cracks, as well as 20 hours @ \$30.00 per hour, or \$600.00 for tree pruning. The tenant states that \$7,095.00 is due to her, which includes the cost of obtaining photographs to prove her claim, parking and gasoline costs while filing her claim, and stated that of that amount she only claims \$5,000.00. She further stated that the unit still requires a ground wire, painting inside and outside, chimney cleaning, heat duct cleaning, gutter cleaning, garage door opener repair and cleaning debris left behind by the landlord's tradespersons.

The tenant also provided copies of letters written to the landlord requesting repairs, only some of which have been completed.

The landlord's agent testified that the tradesperson who cleaned the gutters is also the same person who replaced the fence. He emailed the landlord's agent, and will remove his debris and the extension ladder. She stated that he did put a hose down the gutters to ensure they are clear but did not wash them on the outside. She further testified that the contractor who removed the courtyard wall also patched holes in the wall of the garage to which the wall had been attached. He could not locate any holes or cracks in the stucco or water stains to support the tenant's claim.

She further testified that a contractor had been booked to fix the sliding glass door, but the tenant took it upon herself to repair it prior to the contractor arriving.

The landlord's agent further testified that the tenant did not request any tree pruning, and the landlord was unaware that it was needed. She stated that a recent rent increase is what prompted the tenant to file today's application; the tenant is paying below market value. Also, she had never heard of a ground-wire for the garburetor, and has no record of a garage door opener being included with the rental. This property manager has been managing this property for about 7 years.

Analysis

With respect to the tenant's application for an order that the landlord make repairs to the unit, site or property, the landlord has an obligation pursuant to Section 32 of the *Residential Tenancy Act* to maintain the property in a state of decoration and repair that complies with health and safety standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Further, the landlord is responsible for painting the rental unit at reasonable intervals, and I find that painting inside and outside the unit has not been done at reasonable intervals. The landlord is also responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, as well as heating ducts. I find that the landlord has failed to maintain the property as required under the *Act*, and the tenant's application is justified.

I do not find that the tenant's claim of her time @ \$30.00 per hour is justified. There is no evidence before me that the tenant is a licensed trades-person who would normally charge that amount. I do find, however that the tenant is entitled to some compensation for the landlord's failure to maintain the residence. I find that the tenant is entitled to compensation in the amount of \$384.00, being 8 hours @ \$8.00/hour for fence & gate repair; 10 hours @ \$8.00/hour for mould removal on walls caused by the landlord's

failure to maintain the residence; 10 hours @ \$8.00/hour for chalking holes & cracks; 20 hours @ \$8.00/hour for tree pruning. I find that the tenant is not entitled to recovery of any compensation for repairing the sliding glass door because the tenant did not dispute the landlord's evidence that the tenant took it upon herself to repair it before the tradesperson arrived.

Further, the unit still requires a ground wire, painting inside and outside, chimney cleaning, heat duct cleaning, gutter cleaning, garage door opener repair and cleaning debris left behind by the landlord's tradespersons, such as lumber, the old gate, a wheel barrel and an extension ladder. I also find that the landlord is responsible for cleaning the white paint drips on the back porch, driveway and walls. I also find that the tenant sent a number of letters to the landlord with respect to the repairs and others commencing April 3, 2000 and continuing until September, 2010, but the landlord has failed to complete all of the repairs.

Conclusion

For the reasons set out above, I order that the tenant be permitted to deduct \$384.00 from the next month of rent that has not yet been paid by the tenant as compensation for the repairs completed by the tenant.

I further order that the landlord complete the following repairs to the rental property: paint the interior and exterior of the rental property; service the furnace and clean the heat ducts and continue to do so at least annually; have the chimney and heat ducts cleaned and continue to do so at least annually; remove the debris and the ladder; repair the garage door opener; and run a hose through the gutters to ensure they are clear.

I further order that the tenant be permitted to deduct an additional \$200.00 per month from future rental payments until such time as all the above repairs are completed commencing December 1, 2010.

I further order that the tenant recover the amount of \$200.00 per month for the last year of the tenancy, for a total of \$2,400.00 for failure to respond to the tenant's requests for repairs that the landlord is obligated to complete. The tenant is also entitled to recovery of the \$50.00 filing fee, and I grant the tenant a monetary order in the amount of \$2,450.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court.

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: November 2, 2010.

Dispute Resolution Officer