



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to recover his filing fee paid for this application. The tenant also seeks an Order for the landlord to comply with the *Act* and seeks to address other issues.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on May 26, 2011. The tenant amended his application and served the landlord again with this amended application on June 08, 2011.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an order for the landlord to comply with the *Act*?

Background and Evidence

Both parties agree that this month to month tenancy started in 2003. Because there was no written tenancy agreement at that time neither party recalls the month the tenant moved in. Rent for this unit is \$375.00 and is due on the first day of each month.

The tenant testifies that at a previous hearing held on December 10, 2010 at which the landlord failed to appear, a decision was rendered concerning the tenants dispute. The landlord was ordered to strictly enforce the restrictions concerning the hours of operation of the laundry facilities to prevent the use of the washer and dryer after 10.00 p.m. The landlord was also directed to relocate the dryer vent so that it does not preclude the tenant from opening his window to obtain fresh air. The tenant was given leave to reapply if these changes were not implemented within one month from the date of this decision.

The tenant testifies that the landlord did not comply adequately with this previous Order. The tenant states the landlord modified the dryer vent so that it now points away from his window however the tenant states he has continued to experience the vent fumes if he has his window open. The tenant states that after he served the landlord with the notice and application for this hearing the landlord did put in a hose to direct the vent away from the tenants' window. The tenant states this appears to only be a temporary fix as the hose is now lying in an enclosed courtyard and when the dryer is on the dryer fumes still fill the courtyard and consequently come into the tenants' window.

The tenant states he experiences a reaction to the dryer fumes from the hot air and dryer sheets. These fumes affect his eyes which become bloodshot and red, his throat dries up and closes and the fumes also make him sneeze. The tenant has provided a letter from his doctor which states 'The tenant feels his health and school studies are adversely impacted by the poor air quality in his apartment secondary to the proximity of the dryer vent to the window.'

The tenant testifies that he has to leave his unit during the day from 8.00a.m. to 10.00 p.m. and this has affected his ability to study. He states he is studying acting and as part of his studies he has to be vocal and use expressive language. It would not be appropriate to do this in a public place such as the library which the landlord has suggested. The tenant states when he gets home he has to air his room which can take up to an hour.

The tenant states he has complained to the landlord and his staff about the long hours the laundry room is open for and finds he is also losing sleep because of these issues. He states this is affecting his health and he has provided another letter from his doctor which states the tenant has severe hypertension which has caused moderate kidney damage. It is important for the tenant to be in a quieter environment so he can get enough restful sleep.

The tenant states he did ask the landlord to relocate him but the only unit offered was a smaller room with no bathroom. The tenant states this was unacceptable and states because he turned down this alternative room they landlords did not offer another one.

The tenant testifies that he is now experiencing harassment and resentment from the landlords' staff. He states if he complains to them they tell him if he doesn't like it to move out. He states they now refuse to give him any complaint forms so he has provided a written log of his situation and event. The tenant states he has been told by staff that no one will believe him as he is classified as "hard to house" and they tell the tenant he is delusional. The tenant states this is stressful as he does not have any mental issues. The tenant claims some of the landlords' staff preach their religious beliefs at the tenant and he takes exception to this. He states one staff member refers to him as being evil and that he should get down on his knees. He states he has tried to walk away from this staff member but he has put his foot in the tenants' door and continued to preach at him.

The tenant seeks compensation from the landlord to the sum of \$5,000.00 for the loss of quiet enjoyment of his rental unit

The tenant also seeks a rent abatement from February, 2011 to June, 2011 because the landlord did not comply with the last Order issued in January, 2011 which gave the landlord one month to make these changes. The tenant seeks the sum of \$1,500.00.

The tenant states his tuition fees for his course are \$15,771.84. The tenant seeks to recover this sum in the event he does not pass his course due to the lack of sleep, rest, missed classes due to sickness and because of the vent fumes and a lack of an opportunity to study. He states essentially he has been told he will not pass the course as he has missed a few classes and in order to get credit for his course he will have to re-sit the course and pay half the course fee again.

The landlord disputes the tenants' claims. The landlord testifies that when they became aware of the previous decision in December, 2010 they redirected the vent away from the tenants' window. The landlord states this vent is five feet away from the tenants' window. The landlord testifies that the tenant has also complained to the city and when the city inspector came out to look he said it was not an issue. This report from the city inspector has been provided in evidence. The landlord states they were not aware it was still an issue for the tenant until they got his new hearing documents. At that time the landlord claims they put a longer hose on the vent to direct it down the courtyard. The landlord states he is waiting for his contractor to put a hose onto the vent with a booster fan to direct any fumes up to the roof. The landlord states the tenant may have informed the front desk about his further complaints but he did not come to him about this.

With regards to the laundry hours the landlord testifies he has implemented a laundry room log in and out sheet for staff to ensure the laundry room does not operate before 8.00 a.m. and after 10.00 p.m. this log has been provided in evidence.

The landlord testifies that he did receive a complaint from the tenant regarding harassment by a staff member. He states he questioned this member of staff and states the staff member denied any harassment of the tenant. The landlord states he has not received any other complaints from the tenant in connection to this matter.

The landlord testifies that the tenant has access to his room at any time and it is up to him if he chooses not to use his room for his studies. The landlord states the tenant was offered two other units one of which did have a bathroom but was slightly smaller than the tenants own unit. The landlord also states the tenant has had offers to relocate from BC Housing but has declined these offers. The landlord states he did take appropriate steps to address the dryer vent issue and has continued to seek a solution to this problem.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for compensation for the loss of quiet enjoyment of his unit due to the landlords failure to redirect the dryer hose within a month after being previously directed to do so. I have considered both Parties arguments in this matter and find the tenants' arguments and evidence more compelling. It appears from the tenants' photographic evidence that the landlord has not adequately addressed the issue of the dryer vent within the month after receiving a direction to do so. The landlord took a "band aid" approach to this problem by redirecting the vent however the tenant continued to get heat and dryer fumes blowing into his unit. The landlord did nothing else until after the tenant filed his second application for dispute resolution in June, 2011 and then attached a longer vent hose which has still not adequately rectified the issue. The landlord argues that the city inspected the building and they have provided a report dated June 08, 2011. The landlord states the city inspector found no issues with the building. However, this report documents the inspection of single units and common areas but does not mention the laundry room or courtyard and therefore carries little weight with the issue of the dryer vent.

With regard to the opening hours of the laundry room which the landlord was previously Ordered to address. The landlord has presented a laundry room log sheet which appears to have been started on May 31, 2011. This log shows times for nine days of opening and closing the laundry room but I am not satisfied that the landlord started this log in January, 2011 when he was ordered to do something to address the tenants concerns. However,

as this log now appears to be in place I recommend that the landlord monitors this to ensure his staff continue to use it and continue to ensure the laundry room opening and closing times are adhered to.

The tenant claims that he has been harassed by the landlords' staff in the building. The landlord argues that this was brought to his attention and was addressed by him with no evidence that a staff member had harassed the tenant. In this matter when one Party's testimony is contradicted by the testimony of the other Party the Party making the claim (in this instance the tenant) must provide corroborating evidence to satisfy the burden of proof. Therefore, other than the tenants written log, there is no other corroborating evidence to support the tenants claim that he has been harassed by a staff member after he complained to the landlord and I cannot determine that the tenant that further harassment has taken place.

Consequently, it is my decision that the tenant is entitled to compensation for the loss of quiet enjoyment of his rental unit, the resulting impact on his health and the fact that the landlord did not adequately comply with a previous Order. However, I find the tenants claim to be excessive as I am not convinced that his studies have suffered or should have suffered as a direct impact of the dryer vent, resulting in the loss of the use of his unit from 8.00 a.m. till 10.00 p.m. Consequently I limit the tenants claim to **\$2,500.00**.

With regard to the tenants claim for a rent abatement due to the loss of his rental unit between 8.00 a.m. and 10.00 p.m.; In this matter I find the tenants comment that he could not use his unit between these hours for four months to be an exaggeration as the tenant has provided documentary evidence in the form of a record of incidents in the building which indicate that he was not away from his unit from 8.000 a.m. until 10.00.m every day. Therefore, I place a limit on the tenants claim for compensation and it is my decision that the tenant is entitled to recover the sum of **\$750.00**.

With regards to the tenants claim for \$15,771.84; the tenant claims this as a potential loss of tuition fees as he has not been able to graduate from his acting course. As stated above I am not satisfied that the tenant could not maintain his studies as by his own records he was

not away from the rental unit for long periods each day for four months. I am not satisfied that the tenant did everything he could to mitigate his loss in having an alternative place to study and I do not find the landlord is responsible for the lost hours of study which may have resulted in the tenant not obtaining his diploma. I further find the tenant has provide no evidence to show that he did fail to graduate from this course only that he has missed a number of hours of study and in January the tenants attendance was at 73 percent of the required hours. The tenant was sent a warning letter from his collage that noted if his attendance drops below 60 percent he will be withdrawn from the program. The tenant has provided no other evidence to show that he was withdrawn from the program. Consequently this section of the tenants' application is dismissed without leave to reapply.

On the tenants' application he has documented 'toilet repair' however the tenant has failed to address this issue during the hearing and has presented no documentary evidence in connection with a toilet repair. Therefore, no Orders will be made in respect of this matter.

The tenant has applied for an order for the landlord to comply with the Act. S. 32 of the *Act* states that 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.

While I recognize that this is a 100 year old building, the relocation of the dryer hose should not affect the integrity of the structure and the landlord should have ensured this work was carried out within the month granted in the previous decision. As the landlord has previously been ordered to address the issue with the dryer vent in a manner which ensures the tenants unit is suitable for occupation **I HEREBY ORDER** the landlord to relocate the dryer vent immediately. If this is not relocated within **One week** of receiving this decision the tenant is at liberty to file a new application for a rent reduction until such a time that the landlord does comply with this decision and Order.

The tenant has applied to recover his filing fee however this section no longer applies and is therefore dismissed. The tenant is entitled to a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Compensation for loss of quiet enjoyment	\$2,500.00.
Compensation for rent abatement	\$750.00
Total amount due to the tenant	\$3,250.00

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,250.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 29, 2011.

Residential Tenancy Branch