



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This face to face hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to order the landlord to comply with the Act, regulation, or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. The landlord arrived late; however the hearing commenced on time with the landlord placed on teleconference call while driving to the Residential Tenancy Branch. The landlord arrived in person at approximately 1015hrs. He stated that he did not have his package of evidence, and that his witness, the property manager, failed to appear. The tenant's advocate stated that the evidence was sent to the landlord by registered mail. A copy of that evidence was provided to the landlord and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Should the landlord be ordered to comply with the Act, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a duplex. Pursuant to a written agreement, the tenancy started in November 2000. The rent was \$1975.00 per month during the time under which the tenant's claims apply.

In her documentary evidence, the tenant provided in part:

- Nine photographs in support of her claim to show the rotten condition of the deck's structure, and broken pots and plant containers.
- A letter from the City of North Vancouver dated December 15th, 2009, informing the landlord that the deck of the rental property was deemed unsafe to use and to have it replaced by March 31st, 2010.
- A City Stop Work order dated April 12th, 2010 for non-compliance.
- The tenant's summary concerning a defective fridge.
- Invoices for paint, planters, watering can, and repairs as listed below.
- A letter from the tenant's advocate dated June 28th, 2011 concerning this claim.

The tenant's monetary claim is as follows:

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|---|-----------|
| - Loss of use of the unit : | \$7200.00 |
| - Broken plant containers: | \$ 59.34 |
| - Spilled paint and clean up: | \$ 265.65 |
| - Poor water quality and water filter: | \$ 250.00 |
| - Cost of repairs to tenant's sidewalk: | \$ 350.00 |
| - Sub-total: | \$8124.99 |

Concerning the loss of use for failure to maintain and repair for \$7200.00, at the hearing the tenant's advocate provided the following breakdown:

- Lack of lawn maintenance: \$20.00 per month over 12 months:	\$ 240.00
- Loss of use of backyard due to debris: \$50.00 per month over 4 months:	\$ 200.00.
- Loss of use of fridge: \$100.00 for 3 months:	\$ 300.00
- Loss of use of the sundeck: \$385.00 per month for 15 months:	\$5775.00
- Amended total:	\$6515.00

Not all the submissions and statements from the parties are documented in this decision; rather, the salient portion of the parties' testimony is recorded as it pertains to the facts and issues being disputed.

The tenant testified that the landlord directed her to the property manager concerning issues with the rental unit. She stated that she addressed her concerns with the deck in 2007, and that nothing was done until she contacted the City of North Vancouver in November 2009. She said that the City inspected the deck on December 7th, 2009, and provided a copy of the City's letter stating that the deck was unsafe for use, and directing the landlord to replace the deck by March 31, 2009. The tenant said that contractors did not attend until April 2010; she said that a stop work order was issued by the city because the contractors had not obtained a permit, and that the deck was replaced by July 2010. The tenant said that she did not use the deck for three years and was impacted by the loss of that use. She said that once the construction was completed, the contractors only removed 75% of the debris, and that she was left with cleaning the remaining debris and repairing her sidewalk at a cost of \$350.00. She said that she gave up on the landlord and did not notify him of the additional cleaning that was required.

The tenant stated that she had a verbal agreement with the landlord that lawn maintenance was the property manager's responsibility. She said that she has conflicts with the property manager and that because he did not maintain the lawn properly she purchased her own lawn mower. She said that the property manager broke her planters

and a water container with his lawnmower, and that he knocked over a 5 gallon pail of paint that cost \$236.65 to replace.

The tenant said that she notified the landlord that the fridge was defective in November 2010, and that the fridge was not replaced until January 22nd, 2011.

The tenant said that she has had poor water quality since the start of the tenancy. She said that a plumber came in January 2010 and informed her that it was caused by rust accumulating in aging faucets. She said that the landlord told her to contact the property manager, and that the property manager said that he needed authorization from the landlord. The tenant said that she gave up and purchased two water filters for \$500.00.

The tenant's advocate stated that she sent the landlord a letter dated June 28th, 2011 by registered mail, inviting the landlord to resolve the issues informally, but that she did not receive a response.

The landlord testified that he directed the tenant to deal with the property manager. He stated that he is busy with a full time job and stated that he has confidence and relies heavily on his property manager's ability to govern the tenancy; however he did acknowledge that conflicts did arise with the tenant. The landlord stated that the tenant has a Rottweiler contrary to the tenancy agreement, that this has been tolerated and that the tenant's rent is very reasonable. He stated that the grass is cut regularly and properly maintained. He said that the contractors were paid to clean the yard and that they removed all debris. Concerning the damaged sidewalk, he said that there was never a sidewalk, and the tenant clarified that it was a gravelled landscaped walkway that she built herself.

Concerning the fridge, the landlord said that as landlord it is his job to ensure appliances are fixed or replaced, and that it was done within 30 days.

The landlord agreed that the deck needed replacing, but stated that the tenant never used the deck, other than for keeping plants and flower pots. He also stated that the tenant made it difficult for the contractors to work by refusing to move her car and providing proper access for electrical power.

The landlord said that he was not aware of the spilled paint and the other damages caused by the property manager. He also said that he did not see the advocate's letter of June 28th, 2011, but deems the claim to be frivolous. He also said that he never heard of the concern with the water, and that the water quality was never a problem when he lived there.

The tenant responded that she works 12 hour shifts and that her car was out of the way, and that as requested she had removed all her belongings to facilitate the contractors. The landlord concluded by stating that he only uses certified contractors, that the removal of debris was part of the contract, and that he is thankful for his property manager.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenant to prove her claim against the landlord.

S 32(1) of the *Residential Tenancy Act* provides in part that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the

health, safety and housing standards required by law, and to make it suitable for occupation by a tenant.

Section 7(1) of the Act provides in part that if a landlord does not comply with this Act, the Regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for the damage or loss which results.

I find that the tenant has submitted sufficient evidence to prove, on a balance of probabilities that the landlord was aware of the decaying condition of the deck, and that the landlord was not diligent in addressing the problem in a timely manner.

Section 7(2) of the Act states in part that a tenant who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The concerns with the deck arose in 2006 and the tenant has filed to resolve this matter five years later. A remedy would have been for the tenant to seek assistance through dispute resolution when the landlord failed to tend to the problem at that time. This principle applies with all the issues that have been raised by the tenant. I do not find that this late claim is consistent with the tenant's obligation to mitigate all these losses.

The landlord did not bring any material evidence to support his submissions. I find that he does in fact rely heavily on his property manager, who was not present for these proceedings, to resolve problems with this tenancy. Nor did the landlord appear to be prepared for this hearing to substantiate his testimony.

On the evidence I find that the landlord was not diligent in maintaining his property, and that the tenant is entitled to compensation for the loss of use of the deck. As stated earlier I find that the tenant ought to have made an application for dispute resolution when the landlord failed to comply with the Act or the tenancy agreement. None of the purchases the tenant made were the result of emergency repairs. Since the tenant did not specify how impacted she was by the loss of use of the deck and the yard, I will grant the tenant a rent reduction as follows:

- For the loss of the deck I grant a rent reduction of \$100.00 per month for 15 months for \$1500.00.
- For the loss of use of the backyard I grant a one-time rent reduction of \$200.00.
- For the loss of use of the fridge, I grant one-time a rent reduction of \$300.00.
- For the lack of proper yard maintenance, I grant a one-time rent reduction of \$100.00.

Concerning other repairs, I find it more than likely that the tenant has encountered problems, and was frustrated between trying to contact either the property manager or the landlord in order to resolve these problems. The landlord is responsible for the representations of his property manager, and ultimately bears the responsibility to ensure that he is compliant with Section 32 of the Act. Concerning the repair to the sidewalk, I find that this was caused by the contractors and not as a result of the landlord's actions; therefore I dismiss this portion of the tenant's claim. Concerning damages to pots, a water container, and the spilled paint; I accept the tenant's undisputed evidence that they were caused by the property manager and grant her the combined sum of \$324.94.

Concerning the water quality issue, the tenant said that she spoke to the property manager. The landlord said that he never heard of the problem. I accept that the tenant did address this issue; that it is likely caused by aging faucets; and I grant the tenant a one-time rent reduction of \$200.00.

The tenant submitted an invoice for removing debris left by the contractors; I find this version more credible than the landlord's assumption that they cleaned everything up because the contract said so; therefore I find the tenant entitled to recover that expense and I award the full amount of \$350.00

A landlord must always ensure that all statutory obligations concerning a tenancy, whether administered by himself or a third party, are met in accordance with the Act, regulation, and tenancy agreement. Since the tenant undertook to address and resolve, in one form or another, the issues identified in this application, it is no longer necessary that I order the landlord to comply.

Conclusion

The tenant established a claim of \$2974.94. Since she was partially successful, I find the tenant entitled to partial recovery of the filing fee and I grant her \$50.00. Pursuant to Section 67 of the Act, I grant the tenant a monetary order for the sum of \$3024.94.

This Order may be registered in the Small Claims Court and enforced 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: September 28, 2011.

Residential Tenancy Branch