



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNDC, OLC ERP, RP

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. A monetary order for compensation for damage or loss in the amount of \$5,000.00;
2. An Order that the landlord comply with the Act;
3. An Order that the landlord make emergency repairs for health or safety reasons; and
4. An Order that the landlord make repairs.

This hearing was originally scheduled to be heard on August 19, 2011. The landlord requested an adjournment. The landlord testified that he had not had time to review the evidence in this matter or to seek legal advice and this was particularly necessary due to the sum being sought.

The landlord's request for an adjournment was granted and the hearing was rescheduled for September 29, 2011.

Both parties attended the hearing and gave evidence under oath or affirmation.

The tenants advised that as this tenancy has ended the tenants are withdrawing their claims for repairs and an order that the landlord comply with the Act.

Issue(s) to be Decided

Are the tenants entitled to any of the Orders sought?

Background and Evidence

The tenants testified that this tenancy began in March or April 2010 and ended July 2011.

The tenants say they pay \$600.00 per month for a room without a kitchen. The tenants say there was a fridge when they moved in but the owner threw it out. There is no kitchen in the building.

The tenants say there was always garbage in the hallways and other things like mattresses blocking the fire escapes. There are no fire extinguishers on their floor and the fire escapes were padlocked at night so if there was a fire they would not be able to get out. The new smoke alarm kept beeping so it was disconnected. The tenant says it's broken because of the bugs in it.

The tenants say the room has mice and cockroaches. The floor is uneven like it is caving in. The window is broken and has been replaced with Plexiglas which is starting to come unglued. Two walls are patched but only painted with a primer coat. There are holes in the walls from the hallway to the broken baathrough through which mould and rats can be seen. The working bathroom does not get cleaned. There is sometimes fecal matter on the walls.

The tenants say there is one shared bathroom and the other is broken and there is only one shower for use by 30 people.

The tenants say the building has been sprayed for pests only once during their tenancy.

The tenants say the landlord treats them like trash and is constantly belittling them and whenever they complain the landlord tells them to "...keep my council..."

The male tenant says he worked for the landlord operating the front desk and doing janitorial work on weekends at a bar that the landlord owns. The tenant says he quit because he never got paid for his work. The tenant says he once worked 10 hours moving empty bottles from the bar to another location and was never paid. The male tenant says that when he inquired about payment he was told "It's in the past, don't worry about it" and "...another thing from you and you'll find your ass on the street".

The tenant says there is a no guest policy which affects his social life and that his friends would like to visit but they "...won't be allowed in the building..."

The tenants say they live in the hotel because the landlord gave money to a friend who referred them to the rental building. The tenants say that one of the conditions of living in the rental building is that you must have a methadone prescription and the landlord offers "...people cash to take their methadone prescriptions to the pharmacy he owns."

Before switching pharmacies to the landlord's pharmacy the male tenant says he spoke to the landlord's wife to ask what benefits he would get from switching his prescription following which the landlord came to "...my room to physically intimidate me into switching the prescription". The male tenant says his methadone doses were watered down and he became ill from the methadone. The male tenant says he has gotten many cold sores from the bottles used to taking the dosage and this is because the bottles are not washed in between doses.

The male tenant says these conditions have caused a great deal of stress and has a negative impact on the relationship he has with his partner (the other tenant). The male tenant says he and his partner fight more because they are "...stressed out and I have really bad reactions to the mould".

The female tenant says she is now taking anti-depressants because of the conditions in which she lives and she states she is constantly scared of getting evicted. The female tenant says there is a karaoke bar downstairs from the hotel that makes loud noises most nights until 2 am..." and that this has affected her sleep and health.

The female tenant says she's afraid to leave because she believes the landlord will keep her damage deposit and will not provide a reference to a new landlord.

The tenants say they vacated on their own accord in July 2011 when BC Housing advised that they had alternate accommodation for the tenants. The tenants say they did not pursue a claim with the Residential Tenancy Branch while they were living in the rental unit because the landlord would retaliate. The tenants say they are only filing a claim now because there are others and they feel safer in a group.

The landlord says the building has regular professional pesticide maintenance as per the City of Vancouver's Orders.

The landlord says the tenants did help with cleaning and were paid \$20.00 for their work. The tenants agreed they were paid \$20.00 a shift and the shift lasted 1.5 to 2 hours.

The landlord says that the reason one of the tubs was out of service for at time is because the male tenant vandalized the tub and it had to be repaired.

The landlord declined to address the methadone issue as the landlord says this is a non-issue and a fabrication by the tenants.

The landlord says the tenants are allowed to have guests.

The landlord says the list of goods the tenants say they lost bears scrutiny because the tenants have failed to prove that any of the goods existed or if they did exist what the actual value of the goods might be. With respect to the 42" television the landlord says the male tenant took this television from another suite and then gave it to another tenant when he vacated.

Counsel submits that the City of Vancouver found many deficiencies in the building. Counsel states that the arbitrator should take into account the evidence of all the tenants who have filed claims with the Residential Tenancy Branch as a whole as evidence of the state of the quality of life in the rental building. Counsel submits that the tenants were compromised and unable to report problems to the Residential Tenancy Branch either because they did not know their rights or because they were concerned about retaliation if they did file a claim.

Analysis and Findings

The testimony of the tenant and the landlord is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here. Overall I find that the tenants have failed to provide sufficient evidence to support their claim for a monetary award. While counsel asks me to consider all of the cases I have heard with respect to this property I must decline. Each case must be decided on its own merits and while there is commonality of the claims being made I have little evidence to determine how the conduct of the parties involved may have affected the claims or how mitigation or the lack of mitigation may have affected the outcomes. In this case I find there has been little mitigation. Counsel for the tenants asks me to accept that the parties are compromised and should not be held to the same rules as other tenants but I cannot do this. Each claimant must prove their claim and the *Residential Tenancy Act* states that when a claimant makes a claim they must show how they mitigated their damages. There has been no evidence to show that the tenants even complained about the issues for which they now seek \$5,000.00 in compensation.

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*.

