



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP RR

Preliminary Issues

The Tenant affirmed that by the end of October 2011 the Landlord had completed all the requested repairs and that she is very happy with the repair work that was performed. Therefore she was withdrawing her requests for Orders to have the Landlord comply with the Act, to make emergency repairs, to make repairs to the unit, site, or property, and for reduced rent for services or facilities agreed upon but not provided. She wished to proceed with her request for monetary compensation of \$300.00.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant suffered a loss under the Act, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain monetary compensation pursuant to section 67 of the Act as a result of that loss?

Background and Evidence

The Tenant confirmed she did not submit documentary evidence in support of her claim. The Landlord confirmed he did not serve the Tenant with a copy of his evidence package and did not deliver the evidence to the *Residential Tenancy Branch* until approximately November 4, 2011.

The Tenant affirmed her tenancy agreement began on approximately March 1, 2005. Her current rent is payable on the first of each month in the amount of \$648.00 and a few weeks before March 1, 2005 she paid \$300.00 as the security deposit.

The Landlord confirmed the amount of rent payable and the amount of security deposit paid, however he is of the opinion that the tenancy agreement did not begin until 2006 and therefore the security deposit was not paid until 2006. Neither party had access to the written tenancy agreement during the hearing to verify the start date of the tenancy agreement.

The Tenant advised she first informed the Landlord that her sink was plugged and the garberator was not working around the beginning of September 2011. The Landlord attended her unit, without notice a few days later and unplugged her sink and turned off the garberator. She knew he had attended her unit because he left her request for maintenance document on her counter.

The Tenant stated that when the sink plugged again a few days later she was reluctant to force the issue with the Landlord so began to scoop out the sink by hand. Then near the end of September she saw the Landlord in the hall and they discussed the issue. She gave the Landlord verbal permission to enter her suite the next day, even if she was not home, so he could fix the problem. He did not attend that day and when he did attend about four days later, he entered without notice and began working on the problem. When she returned home she pointed out how the kitchen taps and water spout were loose from the counter and requested that it be repaired as well. She was told that the Landlord would not be spending money to repair her problems and she was offered the use of a plunger.

The Tenant advised that the Landlord took no action to repair the problems; rather he just worked around them. No effort was made to actual fix the problem until she filed her application for dispute resolution on October 6, 2011. She believes she is entitled to \$300.00 compensation for having to wash her dishes in the bathroom sink for two months and for having to put up with the smell from the kitchen sink.

The Landlord stated that he made efforts to repair the problem however there were times when he had to attend to emergencies in the building instead of attending the Tenant's apartment. He stated that because the Tenant's rent was so low that the Landlord's head office would not be paying to repair the rental unit unless the Tenant agreed to a small rent increase. He then advised that they would not ask for a rent increase and that they had made every attempt to repair the problem but that the Tenant was not always available. He confirmed entering the rental unit without posting

a notice of entry however he only did so when he had verbal agreement with the Tenant or after leaving a message on her voicemail. He also provided an explanation to the Tenant on the proper way to use and clean the garberator and gave her instructions to prevent the blockage. When his instructions did not work he decided to have the garberator removed and the drain pipe replaced.

In closing the Tenant advised the Landlord was capable of completing the required repairs to the garberator and her taps all along but purposely delayed them until she made a claim for dispute resolution. She was not able to use the kitchen sink for two months so she should receive \$300.00 as compensation.

Analysis

The Landlord confirmed he did not serve the Tenant with copies of their evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 32 of the Act provides 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.

The *Residential Tenancy Policy Guideline # 16* provides that if the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

The evidence supports the Tenant first informed the Landlord of the sink blockage in early September 2011 at which time the Landlord attended and attempted to repair the problem. Although the problem reoccurred the Tenant did not inform the Landlord immediately and waited until near the end of September before advising the Landlord

the problem had reoccurred. Therefore I find the Tenant did not mitigate her loss during the month of September 2011 as required under section 7 of the Act.

I accept the Tenant's testimony that once she informed the Landlord the problem had reoccurred that the Landlord told her they would not be spending money to repair the problem and that it was not until she made her application for dispute resolution that attempts were made to repair the problems.

As per the aforementioned I find the Tenant mitigated her loss of the use of her kitchen sink for the month of October 2011. Accordingly, I find the Tenant is entitled to monetary compensation for not being able to use the kitchen sink during October 2011, pursuant to section 67 of the Act, in the amount of **\$32.50** (Approximately 5% of the monthly rent).

I have included with this decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenant's decision is accompanied by a Monetary Order in the amount of **\$32.50**. This Order is legally binding and must be served upon the Landlord.

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 10, 2011.

Residential Tenancy Branch