



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; OLC; RR; PSF; RR; FF

Introduction

This is the Tenants' application for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations, or tenancy agreement; for an Order that the Landlord comply with the Act, regulations, or tenancy agreement; for an Order that the Landlord make repairs to the rental unit; for an Order that the Landlord provide service or facilities required by law; to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlords.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

This Hearing was convened on September 26, 2011, and adjourned to November 23, 2011. **An Interim Decision and Orders were issued on September 28, 2011, which should be read in conjunction with this Decision.**

Issues to be Decided

1. Have the Landlords complied with the interim Orders provided orally on September 26 and in writing on September 28, 2011?
2. Are the Tenants entitled to the monetary awards and Orders sought pursuant to the provisions of Sections 32, 62(3), 65(1), 67 and 72(1) of the Act?

Background and Evidence

These parties have been to Dispute Resolution five times prior to this Application. The Tenants were provided with rent reduction and repair orders were issued to the Landlords. At the outset of the reconvened Hearing, the Landlord's agents testified that the holes in the kitchen wall and ceiling have been repaired. The Tenant testified that the Landlord placed a decorative cover over the vent in the ceiling, but that water was

still coming through the ceiling and dripping to the floor. The Tenant also testified that there remains a large hole in the kitchen wall which extends to the exterior of the building. The Landlord's agents testified that the ceiling did not show signs of water leaking when the decorative trim was placed, and that the Tenants did not tell the Landlord about any leaks coming from the vent before the Hearing. The Tenants stated that the Landlord's agent was advised about the leak, and was shown the leak during a routine inspection.

The Tenants' witness testified that she has seen the hole in the kitchen wall and that it is located under the counter near the plumbing for the washer and dryer. The witness testified that you could see through the wall and to the outside and that the hole is 3 to 4 inches in diameter.

The Landlords' agents testified that the fridge, washer and dryer have been installed pursuant to the interim Order. The Tenant testified that they are installed, but the washer and dryer are smaller than the ones the Tenants had in the now demolished laundry room and that the fridge was not replaced within one week. They testified that it took one month for the Landlords to replace the fridge, having first replaced the fridge with a fridge that was the wrong size.

The Landlords' agents testified that they had a professional inspect the rental unit for mould as quickly as they could, but that it did not happen until November 2, 2011. The Landlords provided a copy of the inspector's report dated November 10, 2011, to the branch and to the Tenants on November 22, 2011. The Landlords agents testified that they provided these copies as soon as they were available to them.

The Tenant testified that she had concerns arising from the professional's report. She stated that there is currently plastic around the doors in the bathroom in order to contain the mould spores and that the professional has recommended removal of the fungus, after checking for asbestos in the walls, and replacement of any rotten wood and exposed insulation.

The Landlords' agents submitted that the report shows that there is minimal fungal contamination however they stated that the Landlord is willing to remove the spores. The Landlords' agents testified that the Tenants failed to mitigate by filing their application or notifying the Landlords in a timely fashion with respect to mould issues in the bathroom.

The Tenant testified that the Landlords were notified of the problem in writing on November 30, 2010 and that the Landlords have had a year to deal with the problem and have not.

The Tenant submitted that the Landlords show no concern for Orders made by a Dispute Resolution Officer in February, 2010, and that the Dispute Resolution Officer had made an Order allowing them a rent reduction in the amount of \$300.00 per month, for a total monthly rent of \$1,200.00, until certain repairs were completed. The Tenant testified that the Landlords have not complied with the previous Orders, and were harassing the Tenants to pay full rent even though they had not complied with those Orders.

The Landlords' agents submitted that they had complied with the Orders and that the Tenants should be paying full rent in the amount of \$1,500.00. They stated that the Tenants were obstructing them from completing the work that was the subject of this application, were rude to their workmen, and were refusing access to the rental unit in order for repairs to be done. The Landlords' agents asked for additional interim Orders regarding access and the opportunity to address issues.

The Tenant denied ever refusing access now or in the past, when proper Notice was given.

Analysis

In reaching this Decision, I have considered both parties' oral testimony; the Tenants' relevant documentary evidence that was served on the Landlords on September 18, 2011; the Landlords' relevant documentary evidence that was served on the Tenants on September 20, 2011; and the professional mould inspector's report that was provided to the Tenants and the Residential Tenancy Branch on November 22, 2011.

The Tenants provided copies of two Orders from previous Dispute Resolution Hearings regarding this tenancy. During the course of the Hearings, both parties made submissions regarding previous Orders made by Dispute Resolution Officers concerning a rent reduction for required repairs. A search of the Residential Tenancy Branch data based revealed the following Dispute Resolution Hearings have taken place over the course of this tenancy:

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|------------------|---|
| 1. Hearing date: | February 24, 2010 (decision issued February 25, 2010) |
| Applicant: | Tenants |
| Issues: | Should a Notice to End Tenancy be set aside?
Should a Notice of Rent Increase be set aside?
Are the Tenants entitled to a Monetary Order?
Should the Landlord be ordered to perform repairs? |
| Conclusion: | Notice to End Tenancy set aside |

Notice of Rent Increase set aside

Tenants awarded \$1,540.00 for loss of heat; laundry room leak; kitchen leak; bathroom leak and unrepaired wall; and recovery of filing fee.

Landlord ordered to repair leaks, repair walls and heating system by March 31, 2010

2. Hearing date: March 22, 2010

Applicant: Landlord

Issues: Landlord sought Order of Possession, and Monetary Order for unpaid rent

Conclusion: This matter proceeded by way of Direct Request Proceeding, where the attendance of a tenant is not required, pursuant to the provisions of Section 55(4) of the Act. The Dispute Resolution Officer found that the findings in the February 2010 decision may impact the amount of rent owed for January 2010, and therefore the Direct Request Proceeding could not proceed. The Landlord's application was dismissed. The Dispute Resolution Officer stated that if rent is owed, then the Landlord was at liberty to issue another Notice to End Tenancy and if a Hearing were required, it would be set for a participatory Hearing.

3. Hearing date: June 22, 2010 (decision issued July 20, 2010)

Applicant: Tenants

Issues: Should a Notice to End Tenancy be cancelled?
Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement; make repairs; or provide services and facilities?

Should an order be made setting conditions on the Landlord's right to enter the rental unit?

Are the Tenants entitled to a reduction in rent?

Conclusion: Notice to End Tenancy cancelled.

The Landlords were ordered to cease any and all attempts to collect rent allegedly owing prior to June, 2010, including issuing 10 Day Notices.

The Dispute Resolution Officer found that the Landlord had not complied with the Orders made February 25, 2010.

The Tenants were provided with a reduction in rent in the total amount of \$300.00 per month until the repairs have been made, backdated to March, 2010.

Order made for further \$25.00 deduction in rent commenting August 1, 2010, until mail delivery is restored to the rental unit.

Order made with respect to the Landlord replacing patio boards.

Landlord ordered to comply with Sections 28 and 29 of the Act.

Tenants awarded \$500.00 for harassment by the Landlord.

4. Review Application: August 12, 2010

Applicant: Landlord

Issues: Landlord applied for a review, alleging that the Decision and Orders arising from the Hearing on June 22, 2010, were obtained by fraud.

Conclusion: Reviewing Officer found that there was insufficient evidence that the Orders were obtained by fraud and that insufficient evidence that, even if the Landlord's submissions were accepted, the Decision or Order should be set aside or varied. Application dismissed.

5. Hearing date: August 30, 2010 (decision issued August 30, 2010)

Applicant: Tenants

Issues: Should two Notices to End Tenancy be cancelled?
Should an order be made allowing the Tenants to change the locks at the rental unit?

Are the Tenants entitled to a Monetary Order and rent reductions related to repairs, services or facilities?

Conclusion: The Dispute Resolution Officer found that the Landlord had "withdrawn" the Notices to End Tenancy prior to the Hearing and therefore that portion of the Tenants' application was "dismissed as resolved".

The Tenants' application to change the locks was dismissed. The Tenants' application for a Monetary Order and rent reductions was dismissed, as the Dispute Resolution Officer found that there were no new repair orders required, that the Tenants were already being compensated, and therefore the matter was res judicata.

The Dispute Resolution Officer noted that the Landlord had engaged a new agent, and encouraged both parties to resolve their issues in a cooperative manner.

This is the Tenants' application and therefore the onus is on them to prove their claim on the civil test, the balance of probabilities. The parties disagreed with respect to many issues, including but not limited to: whether or not the Landlords had completed the repairs that were ordered in February, 2010; whether the Tenants had obstructed the Landlords from accessing the rental unit; and whether the Landlords were aware of a leak in the kitchen ceiling. I have carefully considered the testimony and admissible documentary evidence of both parties in an effort to establish credibility in relation to the disputed facts. The history of this tenancy adds credibility to the Tenants' version of events. Two Dispute Resolution Officers found that the Landlords had not completed repairs that were ordered, including a leak in the kitchen ceiling, and therefore the Landlords have a history of failing to comply with repair orders. There is also a history of the Landlords failing to provide proper Notice to access the rental unit. On July 22, 2010, the Landlords were ordered to provide the Tenants with written Notice to enter the rental unit, pursuant to the provisions of Section 29(1)(b) of the Act and the Tenants were awarded \$500.00 for harassment by the Landlords.

I find that the Landlords' agents' testimony was evasive and lacked veracity. For example, the Landlords' agent testified that the Landlord was unaware of a leak in the kitchen ceiling and that the Tenants did not advise the Landlord of the leak. However, the Landlords agents also testified that the laundry/storage room was demolished because its improper installation was causing leaks in the laundry room, kitchen and bathroom of the rental unit.

The Tenants were forthright and clear in their testimony. In their evidence package served September 18, 2011, the Tenants provided photographs of the rental unit, including photographs of holes in the kitchen walls, with exposed wires; construction debris on the balcony; unsecured patio boards; and a gaping hole in the kitchen ceiling with evidence of moisture around the ceiling vent. I accept the Tenants' submissions that these pictures were taken at the end of June, 2011, after the Landlord demolished the Tenants' laundry/storage room. The photographs support the Tenants' submission that the Landlord was aware of the moisture seeping through the vent in the kitchen ceiling, as it would be impossible for the Landlords' agents not to notice the moisture when they installed the decorative cover.

The Tenants also provided photographs of a "stop work" Order by the City dated July 14, 2011, and an inspection notice from the City, which requires:

1. Site to be made safe.
2. Obtain permits for laundry room removal and roof repairs.
3. Obtain permits to legal suite and storage room.
4. Fire separation.

The Tenants also provided two letters from other occupants in the building indicating:

1. that they have also had problems with the Landlords not making repairs in a timely fashion; and
2. the Landlords' agents have entered their suites without their knowledge or consent.

For the reasons stated above, I prefer the Tenants' evidence with respect to the repair Orders and find that the Landlords have not complied with the repair Orders made on February 25, 2010 and July 20, 2010.

I also prefer the Tenants' evidence with respect to the Landlords' access to the rental unit. I do not find that the Tenants have been obstructing the Landlords from making repairs. I accept that the Tenants wish to have the repairs completed and are cooperating with the Landlords. **The Landlords must continue to provide written Notice to the Tenants when exercising their right to enter the rental unit, pursuant to the July, 2010 Decision and Orders.**

RE: Compensation for permanent loss of laundry/storage room and loss of in-suite laundry facilities for three months

The Landlords were ordered to repair the laundry/storage room ceiling on February 25, 2010. The Landlords testified that the room was added by the previous owner and was not built to code. They stated that its roof was causing the leaks in the rental unit and therefore they removed the laundry/storage room from the rental unit on June 28, 2011.

The Tenants provided documentary evidence that on June 24, 2011, the Landlords provided them with notice that the laundry facility would be demolished. Section 27(2) of the Act states:

Terminating or restricting services or facilities

- 27** (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

It is important to note that the Landlords removed this room without providing the Tenants with due notice of its removal, or compensation for loss of a service or facility as required by the provisions of Section 27(2) of the Act. The Landlords also indicated on the June 24th notice that a combination washer and dryer would be “installed inside within a reasonable time” after repairs were made to the roof. I find that the washer and dryer were not installed within a reasonable time.

I find that the removal of the laundry/storage room has impacted the amount of storage space available to the Tenants. The Landlords also put a washer and dryer in the kitchen, limiting the amount of kitchen space. The demolished laundry room/storage area was included in the tenancy agreement and I find that the Tenants are entitled to compensation for loss of that space and the resulting loss of space in the kitchen. Therefore, there will be a permanent rent reduction in the amount of **\$75.00** per month for the diminished value of the rental unit, **effective July 1, 2011**.

For clarity, monthly rent for the rental unit is **\$1,425.00 effective July 1, 2011**, due to the removal of the laundry/storage room and the resulting devaluation of the tenancy agreement. Therefore, I find that the Tenants have overpaid rent for the months of July, 2011 to and including December, 2011, and are entitled to a compensation for that overpayment in the amount of \$450.00 (\$75.00 x 6 months).

In the Decision of July 20, 2010, the Tenants were given a rent reduction in the amount of \$50.00 per month for the Landlords’ failure to make repairs in the laundry room. The Landlords demolished the laundry room on or about June 28, 2011 and therefore, I find that portion of the Order was extinguished July 1, 2011. After setting off the portion of the rent reduction for failure to repair the laundry room ceiling that was extinguished on July 1, 2011, but applied for six months, the balance due to the Tenants is **\$150.00** (\$450.00 - \$300.00).

The Tenants submitted that they normally wash and dry 5 loads of laundry per week at a cost of \$4.00 per load, for a total of \$20.00 per week. The Tenants provided two receipts in support of this submission. In-suite laundry facilities were also a part of the tenancy agreement and I find that the Tenants are entitled to compensation for the loss of laundry facilities at the rate of \$80.00 per month for three months, totaling **\$240.00**.

Re: Compensation for loss of services or facilities – fridge

The Tenants submitted that they began having trouble with their fridge in November, 2010 and that they advised the Landlords’ manager on December 2, 2010. The Tenants did not provide sufficient documentation (for example, a copy of written notification to the Landlords that the fridge was not working properly) that they notified

the Landlord on December 2, 2010. However, the Tenants' application including this claim was provided to the Landlords on September 18, 2011. I find that the Landlords were aware that the Tenants had concerns that their fridge was broken on September 18, 2011. I find a reasonable amount of time to repair or replace the fridge would have been 1 week. The fridge was replaced approximately 8 weeks after the Landlords received the Tenants' application, and award the Tenants **\$175.00** (\$25.00 a week for 7 weeks) for loss of use of a working fridge.

Re: Compensation for loss of quiet enjoyment/harassment

On August 30, 2010, the Tenants made application to cancel two Notices to End Tenancy and wrote on their application: "This is the 4th eviction notice served for the same reason and the tenancy board has already made 2 decisions regarding this matter already and the landlord keeps giving us the same notice over and over again." Based on the testimony of both parties, I find that the Landlords continue to harass them to pay full rent again, even though the Landlords have failed to complete the repairs for which the rent reduction was given. I also find that the Landlords are continuing to conduct themselves in ways intended to intimidate the tenants, by way of threatening comments and behaviour. During the Hearing, I heard that the Landlords' agents continue to pursue them for rent which is not owed. I also heard that the Landlords' agents peered in at them through a window, intimidating and surprising the Tenants who did not realize they were there. Based on the documentary evidence and testimony provided, I find that the Landlords knew about the Tenants' concerns with respect to mould growth in November, 2010, and did not investigate those concerns. Therefore, I award the Tenants compensation in the amount of **\$500.00** and order the **Landlords comply with the Section 28 of the Act and provide the Tenants with quiet enjoyment of the rental unit.**

Re: Repair Orders made February 25, 2010 and July 20, 2010

I find that rent reduction provided in the July 20, 2010 Decision for the Landlords' failure to repair the kitchen ceiling; failure to repair the bathroom wall; and failure to provide heating inspection report and repairs, in the total amount of **\$250.00** per month, remains in place until such time as the Landlords have complied with those Orders.

Re: Compensation for mould in the rental unit

Based on the testimony and relevant documentary evidence provided, I find that there is mould in the rental unit and that further investigation is required. The mould inspector's report indicates, in part:

“Below the sink cabinet, there was some contents loose drywall, the east wall cavity was exposed and appeared to be in poor condition with fungal growth on some of the loose drywall. The east wall above the sink exposed the wall cavity but was covered with a mirror.”

“In healthy indoor environments the levels of fungal spores indoors should be less than the level detected outdoors.”

“Note that levels of fungal spores in air will likely increase during remediation.”

“As only a limited investigation was conducted, we recommend that washroom, as well as other areas in the unit, be further investigated to ensure the identification of all fungal growth and determine the proper remediation protocols.”

The report indicates that the air sampling identified 6 different fungi types, 4 of which were in less concentration than found outdoors. The other 2 types were markedly higher (429 inside, 238 outside; and 476 inside, 333 outside). In addition, a surface sampling from the washroom closet ceiling drywall identified a 7th type of fungus, which was producing spores.

The professional mould inspector's report states “only a limited investigation was conducted” and makes 11 recommendations. Based on the recommendations of the professional mould inspector, **I Order the Landlords to do the following:**

- 1) Instruct the professional mould inspector to further investigate the washroom and other areas identified by the inspector, to ensure that fungal growth is identified and to determine the proper remediation protocols.
- 2) Due to the age of the building, prior to remediation, any asbestos containing materials must be identified, removed and disposed of as per the applicable WorkSafeBC Occupational Health and Safety Regulation.
- 3) Identify and repair **all** sources of moisture ingress.
- 4) Remove all fungal contaminated drywall 2 ft from the fringe of the staining, including the ceiling and upper 2 ft of the walls in the washroom closet.
- 5) Following completion of the above, inspect exposed structures for fungal contamination. If fungal contamination is identified, remove an additional two feet of drywall beyond the fringe of identified fungal contamination.
- 6) Inspect all exposed wood structures. If fungal staining is present and wood is in good condition, remove staining with light sanding. If wood is rotten or in poor condition, remove and replace it.
- 7) Dispose of all insulation exposed by this removal work.

- 8) Conduct the remediation following appropriate work procedures, including worker use of protective equipment (respirators equipped with P100/chemical cartridges; disposable coveralls with integral head and foot coverings; eye protection; and work gloves). Isolate the work area from adjacent areas using polyethylene barriers. Maintain the work area under negative air pressure with HEPA filter equipped negative air units. Seal all fixtures and contents not removed from the work area with polyethylene sheeting and tape. Seal return and supply grilles.
- 9) **An experienced and reputable contractor familiar with fungal remediation and asbestos abatement work procedures must conduct the above remediation work.**
- 10) Following completion of remediation work, and daily as required, thoroughly clean all exposed surfaces in the work areas with a HEPA filter equipped vacuum, wet-wipe the area and then re-clean it with a HEPA vacuum.
- 11) **Following the completion of the above, a professional mould inspector must conduct a visual inspection and fungal clearance sampling. A copy of this report must be provided to the Tenants upon completion of the report.**

I order the Landlords to **comply with Section 32 of the Act and provide and maintain a rental unit that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupancy by the Tenants.**

There will be a rent reduction in the amount of **\$250.00** per month until such time as the Landlords comply with the above orders with respect to investigation and required remediation of the mould in the rental unit.

Additional Repair Orders

I hereby Order the Landlords to remove the construction rubble from the Tenants' deck and to ensure that the patio boards are secured. There will be a rent reduction in the amount of **\$25.00** per month from January 1, 2012 until this Order has been completed.

Re: Total rent reduction

The Tenants are entitled to deduct the following from future monthly rent payments:

Remaining rent abatement from July 20, 2010 Order:

Failure to provide heating inspection report and repairs	\$150.00
Failure to repair kitchen ceiling	\$50.00
Failure to repair bathroom wall	\$50.00

Rent abatement effective January 1, 2012:

Until Landlords comply with orders regarding mould	\$250.00
Until Landlords remove construction rubble and secure patio	<u>\$25.00</u>
TOTAL	\$525.00

For clarity, these deductions are to be taken from the permanently reduced rent of \$1,425.00. Each of the above awards is independent, meaning that if the Landlords repair one or more of the above items, the Tenants may only deduct amounts pertaining to the unfinished repairs. As and when repairs are completed the Landlords must give **written** notice to the Tenants that repairs are complete and indicate the date on which they were completed. Starting the following month, rent will no longer reflect that deduction. For example, if the Landlords complete the repairs to the kitchen ceiling on January 15, 2012, and provide the Tenants with written notice of completion, the rent abatement for that repair will stop and the rent for February will be adjusted upwards accordingly.

If the Tenants do not agree that the repairs have been completed and continue to deduct rent according to the amounts provided above, then the Landlords may apply for Dispute Resolution. **If the Landlords file for Dispute Resolution, the onus will be on the Landlords to prove that repairs are done.**

The Tenants' application has merit and I find that they are entitled to recover the filing fee in the amount of **\$50.00**.

The Tenants have been awarded monetary compensation in the amount of \$1,115.00, calculated as follows:

Loss of quiet enjoyment	\$500.00
Reduction in rent from July/11 – Dec/11	
less set-off in favour of Landlords for loss of laundry/storage room	\$150.00
Loss of laundry facilities for three months	\$240.00
Landlords' failure to repair or replace fridge	\$175.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL	\$1,115.00

Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct this amount from future rent due to the Landlords.

Conclusion

I Order the Landlords to **make further investigation and repairs with respect to mould** in the rental unit, as set out above.

The Tenants may deduct **\$1,115.00** from future rent due to the Landlords.

Effective July 1, 2010, monthly rent for the rental unit is **\$1,425.00**. The Tenants are entitled to a rent reduction of **\$525.00** per month as set out above. **If the Tenants do not agree in writing that repairs have been completed, the Landlord may file an Application for Dispute Resolution and the onus will be on the Landlords to prove that repairs are completed.**

The Landlords are **ordered to comply with Sections 28, 29, and 32 of the Act.**

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: December 14, 2011.

Residential Tenancy Branch