



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, RP, RPP, FF

Introduction

A previous hearing was convened at 1:00 p.m. on February 21, 2012 in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to return personal property / and recovery of the filing fee. An Interim Decision dated February 22, 2012 was issued.

In summary, the previous hearing was adjourned pending the tenant's opportunity to serve the landlord with the application for dispute resolution, the notice of hearing and related documentary evidence (the "hearing package") at a mailing address recently provided by the landlord.

The present hearing was scheduled to commence at 11:30 a.m. on March 20, 2012. The tenant participated and gave affirmed testimony. Despite service of the hearing package on the landlord by way of registered mail, the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking numbers for the registered mail, and the Canada Post website informs that the package was "successfully delivered."

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began approximately 6 years ago. Monthly rent is currently \$1,075.00, and it is payable in advance on the first day of each month. A security deposit of \$475.00 was collected at the start of tenancy.

The dispute arises mainly out of the tenant's claim that, at different points in time, he has been unable to properly close 2 windows in his unit. It is understood that this problem is the result of a faulty handle mechanism. While the tenant claims that he verbally notified the landlord of this problem some while ago, evidence suggests that his concern was first documented for the landlord's attention in August 2011. Thereafter, it appears that related communications have involved a number of parties including not only the tenant and the landlord, but the building caretaker, the property manager, the window manufacturer and the contractor. In an e-mail from the landlord to the tenant, the landlord makes reference to speaking with the property manager about the problem sometime in July 2011. Ultimately, in the fall of 2011, the only faulty window at the time was remedied. However, a second handle mechanism failed in January 2012 and has yet to be fixed.

The landlord takes the position in his written submission that he has contacted the "management company" in a timely fashion after learning of the problem from the tenant. He further notes that the warranty on the handle mechanism is only valid if "trained technicians" deal with the problem directly.

In correspondence submitted by the property manager, a "flaw in the design of the window crank" is identified. The property manager also refers to the subsequent design of a "finger pull option" to help remedy the problem.

Delays in remedying the problem have been occasioned by such things which include, but are not necessarily limited to, the need for on-site assessment of the handle mechanism, the arrival of "wrong parts," the consequential need for re-ordering, and the number of different parties involved in communication about the problem.

The tenant identifies miscellaneous discomfort and inconvenience arising from the faulty hardware on the windows. Further, the tenant claims there has been a breach to his right to quiet enjoyment as a result of repeated visits to the unit variously by the "window manufacturer, installers, job manager and building managers," in addition to a loss of wages arising from his concern to be present in the unit when individuals are scheduled to attend.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

For the particular reference of the parties, section 28 of the Act addresses the **Protection of tenant's right to quiet enjoyment**; section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**; and section 33 of Act addresses **Emergency repairs**.

Based on the documentary evidence submitted by both parties, and on the affirmed / undisputed testimony of the tenant, I find on a balance of probabilities that remedial work required for the faulty window mechanisms does not constitute "emergency repairs." On a balance of probabilities I further find that the landlord has made reasonable efforts to have the problem remedied in a timely manner.

Nevertheless, I find that the faulty handle mechanisms have led to the experience of annoyance as well as extended periods of inconvenience for the tenant. I also find that there has been an absence of clear and efficient communication with the tenant as a result, in part at least, by the number of different parties involved in the process; clearly this has contributed to the tenant's feelings of frustration and aggravation.

In the result, I find that the tenant has established entitlement to compensation in the amount of \$525.00. This is calculated on the basis of \$75.00 per month for each of the 7 months of July, August, September and October 2011, as well as January, February and March 2012.

As to the tenant's claim concerning compensation for lost wages arising from 4 days allegedly taken off work to be present at the unit for visits related to the problem, in short, I find that there is no requirement for the tenant to be present on these occasions. Accordingly, this aspect of the application is hereby dismissed.

Notwithstanding the above, the tenant's rights in this regard are set out in section 29 of the Act which speaks to **Landlord's right to enter rental unit restricted**. The tenant is also at liberty to request assurances that the unit door will be locked not only after the completion of a site visit to his unit, but also on each occasion when persons leave his unit with the intention of returning to it during the same visit to the building.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for miscellaneous costs associated with postage and time required to prepare his submission(s) and attend the hearing(s) is hereby dismissed.

Finally, as the tenant has achieved a measure of success with his application, I find that he has established entitlement to recovery of the \$50.00 filing fee.

In summary, I find that the tenant has established a total entitlement of \$575.00 (\$525.00 + \$50.00). I hereby order that the tenant may withhold this amount from the next regular payment of monthly rent.

Conclusion

I hereby order that the tenant may withhold \$575.00 from the next regular payment of monthly rent.

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: March 21, 2012.

Residential Tenancy Branch