



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC; OLC; RP; RR; FF

Introduction

This is the Tenants' application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an Order that the Landlord make repairs to the rental unit; a reduction in rent; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

A large amount of documentary evidence and oral testimony was provided at the Hearing. I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation pursuant to the provisions of Section 67 of the Act?
- Should the Landlord be ordered to comply with Section 32 of the Act and to make general repairs to the rental unit?
- Are the Tenants entitled to a rent reduction pursuant to the provisions of Section 65(1)(f) of the Act?

Background and Evidence

The rental unit is one of three suites in the top floor of the rental property. The rental property was built in 1912. This tenancy started on February 1, 2005.

A copy of the tenancy agreement was provided in evidence. Rent was \$900.00 at the beginning of the tenancy and is currently \$1,081.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 on January 2, 2005.

A move-in Condition Inspection Report was signed by both parties on January 24, 2005, a copy of which was provided in evidence.

The male Tenant gave the following testimony:

The Tenant testified that the Landlord has been harassing the Tenants since early January, 2012, by:

1. repeatedly requesting access to the rental unit without due notice;
2. issuing unfounded warning letters with respect to complaints allegedly made by a neighbour about noise and cigarette smoking;
3. installing a fan in their bathroom which automatically comes on when the lights come on, thereby disturbing their sleep at night;
4. suggesting that the Tenants leave if they are unhappy with the condition of the rental unit; and
5. commenting that repairs would be made if the Tenants paid more rent.

The Tenant stated that he works out of his home and testified that the Landlord entered the rental unit without due notice a total of 8 times between February 14 and February 25, 2012, which disrupted his work and was an inconvenience.

The Tenant provided copies of e-mails in support of his claim that the warning letters were unfounded and that the Landlord made comments designed to cause the Tenants to give their notice. The Tenants also provided copies of the warning letters in evidence.

The Tenant stated that his neighbours were in agreement that it was normal to hear the sound of day-to-day living because of the age of the building and the inherent lack of sound insulation. He stated that there had been no previous noise complaints from his neighbours for the 7 years that he resided in the rental unit. He stated that the warnings started coming after the Tenants requested repair work to their bathroom.

The Tenants are seeking aggravated damages in the amount of **\$3,243.00** (the equivalent of 3 months' rent from January, 2012 to March 2012) for harassment and loss of quiet enjoyment of the rental unit.

The Tenant testified that the rental unit has been in need of painting since the beginning of the tenancy, and stated that this requirement was noted on the Condition Inspection Report. He stated that, despite repeated requests, the Landlord has failed to paint the rental unit and that she has told them that the Residential Tenancy Act does not require her to do so. The Tenants seek a rent reduction in the amount of \$50.00 per month for the 86 months of the tenancy, for a total of **\$4,300.00**.

The Tenant testified that plumbing repairs were carried out from February 12 to 25 and that this caused disruption to the Tenants. The Tenants seek a rent reduction in the amount of **\$270.25** for this portion of their claim.

The Tenant submitted that virtually no repairs or maintenance work has been done to the rental unit since the beginning of the tenancy and probably for years previous to the start of the tenancy. The Tenants seek the following repair orders:

- That the Landlord provide a timer to the bathroom fan on a separate circuit from the light switch.
- That the Landlord complete the repairs to the ceiling around the fan fitting.
- That cracks in the bathroom wall near the bathtub be repaired.
- That damage to a door frame, caused by the installation of the fan, be repaired.
- That the plastering around the bathroom light switch be completed.
- That a mould specialist be hired to inspect the rental unit for mould, including measuring the spore count in the apartment and sampling the air throughout the apartment, and that all recommendations made by the mould specialist with respect to the Tenants' health and safety be carried out promptly.
- That rust around the bathtub drain be removed.
- That the tiling in the bathroom be replaced.
- That the shower rail and fittings be replaced.
- That the smoke detector be mounted properly.
- That a large section of plaster in the living room be replaced due to blistering and detachment from the wall.
- That all cracks in the walls and ceilings be repaired.
- That all previous repairs be completed in order to blend in the repaired plaster with the remaining portions of the walls and ceilings.
- That a hinge on the den closet door be repaired or replaced.
- That the chimney be cleaned.
- That the external windows be cleaned.
- That the seal around the fridge door be repaired or replaced and the general operation of the fridge be inspected by a fridge repair-person.
- That the linoleum in the kitchen be replaced.
- That the grouting around the kitchen sink and counters be replaced.
- That the kitchen tap be tightened so that it no longer wobbles.
- That a missing window latch arm and a window latch plate be replaced.
- That the Landlord repaint all walls, ceilings, baseboards, window frames, window surrounds, doors, door frames and all other wooden trim throughout the apartment.

The Tenant also requested that the Landlord be ordered to have all painting and retiling done by a professional contractor to minimize disruption to the Tenants.

The Tenants provided photographs of the rental unit in evidence.

The Landlord gave the following testimony:

With respect to the Tenant's allegations of harassment, the Landlord gave the following reply:

1. The Tenants gave permission for the Landlord to enter the rental unit to attend to a plumbing issue in the rental unit and therefore she didn't believe 24 hour written notice was required.
2. The warning letters were genuine and the complainant actually moved out of his suite in order to get away from the cigarette smoke and the Tenants' noise.
3. The Landlord installed the fan at the request of the Tenants because they were concerned about excess moisture in the bathroom which was allegedly causing mould. The Landlord stated that the discolouration on the grout was because the grout was old and that there is no mould in the bathroom
4. The Tenants were taking the Landlord's suggestion that the Tenants leave if they were not happy about the condition of the rental unit out of context.
5. The Tenants were also taking her remarks about paying more rent out of context.

The Landlord stated that the move-in Condition Inspection Report indicated that only the den required painting at the beginning of the tenancy. She submitted that the Tenants are smokers and that their smoking habit was staining the walls. The Landlord stated that she did not have a record of when the rental unit was last painted, but that she believed it was done a couple of years before the Tenants moved in.

The Landlord gave the following reply to the Tenants' application for repair Orders:

- The fan was properly installed by a professional electrician. The house is 100 years old and therefore the electrical system does not allow for two separate switches for the bathroom light and a timer for the fan. She stated that it would be very costly to install such a system and that the electrician had told her that the current system was commonly used in rental properties.
- The ceiling was patched after the fan was installed. The Landlord agreed to sand and touch up the paint around the fan.
- The door frame had to be cut in order to accommodate a new grounded fan switch. The Landlord agreed to touch up the paint around the new switch.
- There was no mould in the bathroom. All of the walls are solid and the tiles are not loose, contrary to what the Tenants allege.

- The bathtub drain was replaced with a new drain as part of the repairs required after the leaky plumbing was fixed. The bathtub is an old bathtub and new drain fittings are a smaller size from the original drain fitting. Therefore, the new drain did not quite cover the same area. The rust mark is very small and hardly noticeable. There is nothing she can do about it without tearing out the tub and replacing it.
- The tiling in the bathroom is older tiling, but was sound and did not require replacement.
- The shower rail and fittings are fully functional and do not require replacement.
- The smoke detector can easily be remounted and could have been remounted when the electrician was there working on the fan, but the Tenants did not mention it to the electrician.
- The Landlord assumes the loose plaster on the wall was damage caused by the Tenants because it was not mentioned on the move-in Condition Inspection Report.
- The only wall cracks noted on the move-in Condition Inspection Report were in the den and the kitchen.
- There were no incomplete plaster repairs noted on the move-in Condition Inspection Report and the only room that required painting was the den.
- The broken hinge is not mentioned on the move-in Condition Inspection Report and the Landlord assumes that the Tenants must have broken it.
- The chimney was repaired and cleaned in January, 2011.
- The external windows were cleaned on November 9, 2011. The windows are heritage original leaded glass with imperfections which do not appear to come clean like modern windows.
- The Landlord was not aware that the fridge required servicing and she would have called a repairman if she had known.
- The linoleum floor in the kitchen is old with normal wear and tear, but does not require replacement. There is no mention of the need to replace the linoleum in the Condition Inspection Report.
- There is no mention of the grout requiring replacement in the Condition Inspection Report.
- The Landlord agreed to call a plumber to tighten the kitchen taps.
- The Tenants must have damaged the window latch are because it is not noted in the Condition Inspection Report and neither is the missing window latch.
- There is no mention in the Condition Inspection Report that the suite was to be painted by the Landlord at any time.

The Landlord provided copies of letters from the electrician who installed the fan, two plumbers who inspected the plumbing at the rental unit, and copies of invoices in evidence.

Analysis

The Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 28 of the Act states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant submitted that the Landlord entered the rental unit on eight occasions in February, 2012, without giving due notice pursuant to the provisions of Section 29(1)(b) of the Act. The Tenant alluded to other infractions of Section 29 on the Landlord's behalf, but limited his claim to the Landlord's access from February 14 to 25, 2012. The Tenant's evidence shows that the Landlord sent the Tenant e-mails the day before or the day of required access. Notice has to be in writing and given to the Tenant in accordance with the provisions of Section 88 of the Act. There is no provision in Section 88 of the Act for a party to give documents to the other party via e-mails. In any event, none of the e-mails gave the Tenant 24 hours notice. I heard testimony that the leak was intermittent and small. I do not find that the intermittent leak in the pipe was an emergency that required immediate attention in order to protect life or property.

The Tenant submitted that he reluctantly allowed the Landlord or the repairman access to the rental unit, and therefore I find that the Landlord was provided access in accordance with the provisions of Section 29(1)(a) of the Act. I find that the Landlord was attending to necessary plumbing repairs. The Tenants' application for rent abatement in the amount of \$270.25 is dismissed. However, **the Landlord is hereby cautioned that she must comply with the provisions of Sections 29 and 88 of the Act when exercising her right to access the rental unit.**

The Tenants have applied for aggravated damages in the equivalent of three months' rent for the period from January to March, 2012 (\$3,243.00). With respect to aggravated damages, Residential Tenancy Policy Guideline 16 states:

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract and that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.

They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

I find that the Tenants did not provide sufficient evidence with respect to an aggravated damages claim in this amount. This portion of their application is dismissed.

It is clear from the testimony of both parties that their relationship has deteriorated markedly over the past few months. I accept the Tenants' submission that this deterioration resulted, in part, from their requests that the Landlord make repairs to the rental unit. The Landlord's oral testimony at the Hearing and the documentary evidence indicates that the Landlord's position is that the Tenants has no right to repairs other than sanding, touching up paint on walls and tightening the loose taps in the kitchen. In fact, the Landlord suggested that the Tenants were responsible for damaging walls, hinges and window fittings. I do not accept this submission. The house is 100 years old and it is normal for hinges and window fittings to wear out in time. The Landlord did not dispute that she also made the following remarks in e-mails with respect to repairs:

"Painting is not the responsibility of the landlord with existing tenants."

"We would do painting and other cosmetic enhancements in your suite if you would agree to a larger rent increase."

"I called the Residential Owners and Managers Assoc of BC and they said we are under no obligation to paint your bathroom but you can paint it yourself."

"If you are so dissatisfied with your suite you should just move out and find something better. Most people do this when they are unhappy."

Section 32 of the Act states:

Criteria Landlord and tenant obligations to repair and maintain

- 32** (1) 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is **caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant**.
- (4) A tenant is **not required to make repairs for reasonable wear and tear**.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

(emphasis added)

Guideline 1 of the Residential Tenancy Guidelines provides that a landlord is responsible for painting the interior of the rental unit at "reasonable intervals". Guideline 1 also indicates that a landlord is responsible for cleaning and maintaining chimneys and cleaning outside windows at appropriate intervals. Guideline 37 indicates that indoor paint has a useful life of 4 years; wooden window framing has a useful life of 15 years; window lock replacement, 20 years; and gypsum board, 20 years. These are **guidelines only** however, based on the Guidelines and the evidence provided, I find that the Landlord has not complied with Section 32 of the Act and **I hereby order the Landlord to comply with Section 32 of the Act** and:

- Repair and paint the interior walls, ceilings and trim;
- Replacing the hinge on closet door;

- Tighten the loose kitchen tap;
- Mount the smoke alarm to the ceiling;
- Have a professional mould inspector inspect the bathroom for mould and comply with any recommendations made by the mould inspection with respect to remediation. I also order the Landlord to provide the Tenants a copy of the mould inspectors report;
- make repairs to the seal around the fridge door;
- Re-grout in the kitchen and bathroom; and
- Repair the window latch arm.

I order that the above mentioned repair and maintenance issues be completed by September 1, 2012.

I also order the Landlord to have the chimney cleaned annually and the outside windows cleaned every 6 months.

I decline to order the Landlord to have all painting done by a professional contractor.

Section 32 speaks to the age of a rental unit. The Tenants were aware of the age of the rental unit when they signed the tenancy agreement and I dismiss the remainder of the Tenants' requests for repairs for the following reasons:

- I accept the Landlord's testimony that the cost of putting in a separate timer for the fan from the light switch is cost prohibitive. I find that the fan is a functioning fan.
- The linoleum is older linoleum, but does not appear to present any safety issues for the Tenants.
- The tile around the bathtub is older tile but does not appear at this time to present any safety issues for the Tenants, unless the mould inspector determines that it should be replaced.
- The Tenants did not provide sufficient evidence that the shower rail and fittings are not functional and that they should be replaced.
- A small amount of rust stain around a drain in an old bathtub may not be attractive, but presents no health or safety issue to the Tenants. I find that, having regard to the age of the rental unit and the bathtub, it is suitable for use by the Tenant. The Landlord may wish to apply commercially available enamel paint or spray-on enamel to the affected area to stop the enamel from further chipping and rusting.

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that the Tenants

provided insufficient evidence to establish a rent reduction in the amount of \$4,300.00. However, I find that the Landlord has neglected to comply with Section 32 of the Act and that the Tenants have suffered a loss of the value of the tenancy agreement as a result. Therefore I allow rent abatement in the amount equivalent to 10% of the monthly rent for the months of January, February, March and April for loss of quiet enjoyment of the rental unit, totaling **\$324.30**. I also allow a rent reduction in the amount of 10% per month, **\$108.10**, until the repairs and maintenance set out above are completed and the Landlord is successful in an application to have the rent reduction stopped.

The Tenants have been partially successful in their application and I find that they are entitled to partially recover the cost of their filing fee in the amount of **\$50.00**. This amount may be deducted from future rent due to the Landlord.

For clarity, rent for the month of May will be \$598.60 (\$1,081.00 - \$324.30 rent abatement - \$108.10 rent reduction - \$50.00 filing fee.), and for subsequent months will be \$972.90 until the Landlord is successful in an application to have the rent reduction stopped.

Conclusion

The Landlord is hereby cautioned that she must comply with Section 29 of the Act when exercising her right to access the rental unit.

The Landlord is hereby ordered to comply with Section 32 of the Act and to make the repairs and provide the maintenance as set out above by September 1, 2012.

The Tenants are entitled to a one-time rent abatement in the amount of **\$324.30** and to a rent reduction effective May 1, 2012, in the amount of **\$108.10** per month until the Landlord completes the repairs and maintenance and is successful in an Application for Dispute Resolution to have the rent reduction stopped.

The Tenants are entitled to recover ½ of their filing fee in the amount of **\$50.00**, which may be deducted from future rent due to the Landlord.

For clarity, rent for the month of May, 2012, will be **\$598.60**. Rent thereafter will be **\$972.90** until the Landlord is successful in an Application for Dispute Resolution to have the **\$108.10** rent reduction stopped.

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: April 11, 2012

Residential Tenancy Branch