



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, MNDC, O

Introduction

This hearing dealt with a tenant's application for Orders for compliance; Orders for the landlord to provide services or facilities required by law; and, monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the originally scheduled hearing and the reconvened hearing. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation in the amount claimed for damage or loss under the Act, regulations or tenancy agreement?
2. Is it necessary or appropriate to issue Orders to the landlord for compliance or to provide services or facilities required by law?

Background and Evidence

Both parties provided a significant amount of submissions and evidence with respect to this dispute, both in writing and orally. Below, I have summarized the parties' respective positions and evidence presented to me.

The parties entered into a one year fixed term tenancy starting September 1, 2012. The tenants are required to pay rent of \$950.00 on the 1st day of every month.

The residential property is an apartment building approximately 40 years old. Since February 2012 the landlord has had documentation in its possession indicating that a survey of the residential property revealed that asbestos fibres are in the drywall joint compound. At the same time, the landlord was cautioned that there may be asbestos material in other areas of the property that were inaccessible during the survey.

On September 12, 2012 an access hole was created in the tenants' bathroom wall to facilitate a plumbing repair. The landlord employed contractors to perform a permanent repair in the tenant's bathroom on October 11, 2012. As the bathroom tiles were being removed one of the contractor's employees left the job site voicing concerns about asbestos. The other contractor hired by the landlord continued to remove and dispose of tiles, insulation from the wall behind the tiles, and install new tiles. The bathroom repairs were completed October 12, 2012. When the repairs were completed the tenants cleaned up dust and debris left from the construction and were later compensated by the landlord for their time spent cleaning the rental unit.

A Worksafe BC officer attended the property on October 12, 2012 and was provided a sample of the insulation that came from behind the bathroom tiles and collected by the tenant. The insulation was tested and confirmed to contain asbestos that was of "moderate risk". A remediation company ("CCI") was called in to oversee the handling and testing of the asbestos exposure. It was recommended that horizontal surfaces be wet-wiped and the unit HEPA vacuumed. Air quality test analysis submitted to Worksafe BC reflected acceptable levels of air particulates as of October 15, 2012.

The tenants remained in the rental unit October 11 and 12, 2012. The tenants stayed with friends on October 13, 2012 and then in a hotel on October 14, 2012 and October 15, 2012. The tenants' stay at the hotel was at the landlord's expense. The tenants also requested and the landlord compensated the tenants \$850.00 for food and cosmetics disposed of during clean-up efforts, laundering of linens, cleaning supplies, time spent cleaning on October 12, 2012, and food and gas costs incurred during the days the tenants were away from the rental unit.

Tenant's submissions

The tenant made submissions that, after the bathroom repairs commenced, he and his wife began vomiting blood and the tenant suffered respiratory ailments. The tenant and his wife went to the doctor on October 14, 2012. Since then the tenant has continued to visit the doctor concerning respiratory problems; however, his wife has not suffered lingering symptoms. The tenant attributes his on-going symptoms to the fact he did most of the cleaning of the construction dust and debris.

The tenant submitted that he directed concerns about asbestos exposure to the landlord's agents and they appeared unconcerned or dismissive of the tenant's concerns.

By way of this application, the tenant is seeking to recover \$24,000.00 from the landlord as compensation for damage to all of the tenants' fabric materials including furniture,

clothing, and linens. The tenant submitted that the asbestos fibres are embedded in the fabric and cannot be washed out. The tenant seeks this compensation so as to dispose of these possessions and replace them.

The tenant is of the position the rental unit remains contaminated. The tenant submitted that the rental unit surfaces were not wiped down and he did not see evidence of HEPA vacuuming as the landlord was required to do. As a result, the tenant is seeking compensation of \$1,000.00 for costs associated to moving out of the rental unit or orders that the landlord properly clean and test the rental unit to ensure the environment is safe.

In addition, the tenant is seeking orders that the landlord provide him with copies of the air quality test results from before and after the unit was allegedly cleaned by CCI or its subcontractors.

The tenant acknowledged receiving documents detailing the air quality test results after the CCI had the unit cleaned but the tenant questioned the veracity of the information, citing:

- The letter from CCI dated October 16, 2012 was unsigned;
- The manager from CCI has been previously fined in another jurisdiction for providing false information;
- The tenant attended the unit during the days the cleaning and air testing was supposed to have taken place and he did not observe any sign of such activities; and,
- Upon return to the rental unit after the allegedly cleaning activities, the tenant observed horizontal surfaces with dust and sand-like material on the bathroom floor.

Upon enquiry, the tenant testified at the hearing that he did not carry insurance. Subsequent to the hearing the tenant provided a written statement indicating his testimony was incorrect and that he and his wife do carry basic home insurance. The tenant did not, however, indicate he had enquired about or made any attempt to pursue an insurance claim.

Landlord's submissions

The landlord was of the position that the asbestos fibres released during the bathroom repair have been disposed of, the rental unit has been cleaned in accordance with the

recommendations it received, and the air quality tests show that the particulate load in the rental unit are well below acceptable limits.

The landlord had the manager of CCI testify at the first hearing date (“the witness”). The witness acknowledged that he was not personally present while the cleaning and air testing was performed and that these tasks were performed by sub-contractors. However, the witness submitted that the air quality tests would detect asbestos fibres not picked up in the cleaning efforts. Further, the witness doubted the presence of the dust and sand-like material after the cleaning and air quality tests were concluded, as submitted by the tenant. The witness was not present at the second hearing date when the tenant made submissions concerning the witness’ credibility.

The landlord submitted that the tenants’ report of vomiting blood and nearly immediate respiratory complaints are inconsistent with general information available about the effects of asbestos exposure, which are typically seen many years later and due to long term exposure. Nevertheless, the tenant is seeking compensation for alleged damage or loss to his personal possessions in the absence of any evidence indicating the value of the items.

The landlord pointed out that under the terms of tenancy the tenants are required to carry tenant’s insurance sufficient to cover the value of their possessions against any damage or loss. The tenant has not indicated he made efforts to file an insurance claim.

The landlord acknowledged that dealing with the disturbance of asbestos has been a learning curve for the landlord. However, the landlord has been working with Worksafe BC to be compliant and has since trained its staff about the risks associated with asbestos and proper procedures to deal with exposure.

The landlord offered to release the tenants from their fixed term tenancy since the tenant expressed concern over continued exposure to asbestos but the tenant did not accept this offer.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Monetary Claim

Considering the events that transpired on October 11, 2012 and 12, 2012 and the test result of the materials that fell from the bathroom wall, I accept that the tenants were exposed to asbestos due to the bathroom repair activities. While it is arguable that the landlord was negligent in its duty of care to the tenants and violated the Act with respect to providing a rental unit that meets health and safety standards, such negligence or violation does not automatically give rise to a monetary award.

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following, on the balance of probabilities:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is upon a party to a dispute resolution proceeding to provide relevant documentary, photographic or digital evidence that supports their position or claim to the Branch and the other party prior to the hearing, in accordance with the Rules of Procedure.

In this case, the tenant has pointed to contamination of his personal property as the measure of his damages or losses that resulted from the landlord's negligence and violation. Where a party is seeking compensation of \$24,000.00 for damage or loss of their personal property I find it reasonable that the party making the claim provide supporting documentation, such as: a detailed list of possessions and their corresponding value, receipts, price lists, estimates; photographs; and, the like. In the absence of any such evidence in this case I find the tenant has not provided sufficient verification of the value of his loss. As indicated above, a party that fails to verify the value of their loss has not met their burden of proof.

The tenancy agreement requires the tenants to carry sufficient insurance to cover their property against damage or loss from any cause. The tenant provided conflicting evidence as to whether he carried insurance at the time of the bathroom repairs; however, the tenant has not given any indication that an insurance claim was explored

or initiated by him. Thus, I find I am not satisfied the tenant has taken reasonable steps to minimize any losses to his personal property that he may have suffered.

Considering the above, I find the tenant has not established an entitlement to compensation of \$24,000.00 for damage or loss associated to his personal possessions and I dismiss this portion of the tenant's claim.

Awards for damages and loss are intended to be restorative and place the party that suffered the loss in the same position had the party not suffered a loss. Accordingly, awards are not made for anticipated losses. As the tenant's claim for moving costs is anticipatory I find this portion of the tenant's claim is not recoverable and I dismiss his request to recover \$1,000.00 for such.

Request for Orders for compliance and services or facilities

The tenant requested Orders that the landlord have the rental unit cleaned and tested for asbestos as he is of the position it was not done or not done adequately. The parties were in dispute as to whether sufficient cleaning and testing was performed and I have considered their respective positions below.

I accept that the sequence of events was that cleaning was to take place and then air quality tests performed to ensure particulates did not exceed acceptable levels. I find it a reasonable presumption that where an air quality test yields acceptable levels of particulates then further cleaning is not required. Therefore, I turn to the air quality test results provided as evidence to determine whether further cleaning is required.

The unsigned letter of October 16, 2012 from CCI provides a chart showing air quality samples taken and the corresponding test result. While I appreciate the tenant's concerns that the letter is unsigned and the tenant raised questions about the credibility of the manager at CCI, I note that the information in CCI's letter is exactly the same as the analysis summary prepared by Emtec Environmental Consulting Ltd. ("Emtec") on October 15, 2012. Therefore, I find it likely that the chart in CCI's letter was merely a reproduction of the data supplied by Emtec.

The analysis summary prepared by Emtec is signed by a representative at Emtec and this person is not the manager at CCI. I was not presented any evidence that would call into question the authenticity of Emtec's analysis or the qualifications of the person who tested, analyzed and reviewed the data on behalf of Emtec. Therefore, I accept that air quality tests were performed in the rental unit, and other areas, by Emtec and the results are as reported on the Emtec analysis summary.

Upon review of the Emtec analysis summary I accept that the particulate loading in the rental unit, and the corridor outside of the rental unit, were found to be low and well below the levels established for clearance as a "clean room".

Although it was suggested to me that the acceptable particulate loading levels are established to meet work site requirements and not specifically residential accommodation, I was not provided any other evidence that the results exceed those acceptable for residential occupancy.

Although it was suggested by the tenant that asbestos fibres may be entrapped or embedded in the fabric materials I was provided testimony by the landlord's witness that the manner in which the air testing procedure is conducted would detect particulates on fabrics. I find this submission to be reasonable since the Worksafe officer and the person performing the air quality test for Emtec would have readily observed the presence of fabric in the testing areas, including carpeting and drapery. Yet, there is no indication that the testing procedure would be different or was dependant on the presence of fabrics. Therefore, I find I am satisfied that the air quality test results reflect an accurate assessment of the particulates to which the tenants are exposed.

In light of the above, I find the tenant has not satisfied me that the rental unit is currently unsafe or violates health or safety standards required by law. Accordingly, I make no orders for the landlord to perform further cleaning or testing in the rental unit or corridor outside the rental unit.

As air quality tests were not performed before October 15, 2012 and the tenant has been provided with the Emtec analysis summary with the landlord's evidence, I make no order for the landlord to provide the tenant with air quality test results.

On a final note, it is upon the landlord to ensure future repairs or renovations are done in a manner so as to not jeopardize the health or safety of tenants. Based upon the landlord's submissions I am satisfied that the landlord is now fully aware that certain building elements in the residential property, including drywall joint compound and insulation, contain asbestos fibres and the landlord has made efforts to train its staff in proper handling of such. Therefore, I make no other orders to the landlord in this regard.

Conclusion

The tenant's monetary claims have been dismissed. I have not issued any orders to the landlord for compliance or to provide services or facilities by law.

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: February 12, 2013

Residential Tenancy Branch

