



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP, RP, OLC, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 24, 2013 he sent the Notice of Hearing, the Application for Dispute Resolution, several documents, and six photographs to the Landlord, via registered mail. The Landlord acknowledged receipt of all the aforementioned items, with the exception of the photographs. These documents, with the exception of the photographs, were accepted as evidence on February 18, 2013.

As I was unable to determine whether the Tenant was being truthful when he declared that he sent the photographs to the Landlord or the Landlord was being truthful when he declared the photographs were not received, I find that considering an adjournment for the purposes of re-serving this evidence was appropriate. The Tenant was given the option of proceeding with the hearing on February 18, 2013, with the understanding that I could not consider the photographs he submitted to the Residential Tenancy Branch, or requesting an adjournment to provide him with the opportunity to reserve the photographs to the Landlord. The Tenant requested an adjournment and that request were granted. At the hearing on March 20, 2013 the Landlord acknowledged receiving the six photographs and they were accepted as evidence for these proceedings.

The Tenant stated that on February 05, 2013 he delivered an additional three documents to the Landlord's business office. The Landlord acknowledged receipt of these documents and they were accepted as evidence on February 18, 2013.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is there a need to order the Landlord to make repairs to the rental unit; is the Tenant entitled to compensation for living in a rental unit that was not maintained in accordance with the *Act*; and is the Tenant entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2011 and that the Tenant currently pays monthly rent in the amount of \$1,564.00.

The Tenant stated that the dishwasher is not draining properly and that he reported the problem to the Landlord in December of 2011. He stated that the Witness for the Landlord inspected the dishwasher in December of 2012; that the problem was not rectified; that he informed the Witness for the Landlord that the problem was not rectified; and that he did not inform the Landlord of the persistent problem until he served notice of these proceedings. He stated that he does not use the dishwasher as it does not function properly.

The Landlord stated that they were advised of the problem with the dishwasher on September 24, 2012 and that no attempts were made to inspect the dishwasher until after the dispute resolution proceeding on November 20, 2012.

The Witness for the Landlord, who describes himself as a handyman with no certifications, stated that sometime in November or December of 2012 he ran the dishwasher through two full cycles and it was functioning properly. He stated that a few days after this inspection the Tenant informed him the dishwasher was still not functioning properly; that he made no further attempts to repair the problem; and that he did not advise the Landlord of the report of a continuing problem with the dishwasher.

The female Witness for the Tenant stated that she overheard the Witness of the Landlord state that he did not know what was wrong with the dishwasher.

The Tenant submitted a photograph of the interior of an electrical panel in which a red and white wire are connected by tape and a plastic wire connector. The parties agree that this connection was made by the Witness for the Landlord, who is not an electrician, for the purposes of providing 220 volts to the water heater. The Tenant contends the repair is unsafe and does not comply with housing standards, and he is

seeking an order requiring the Landlord to properly wire the panel. The Landlord contends the repair is safe and does not comply with housing standards.

The Tenant submitted a photograph of the front door, which he contends needs weather stripping. The Tenant stated that the photograph accurately reflects the current condition of the front door and that it reflected the condition of the door when it was inspected by the Witness for the Landlord in November of 2012. The Tenant stated that the problem with the door was reported to the Witness for the Landlord, who informed him he would report it to the Landlord.

The Witness for the Landlord stated that he did inspect the door, at the request of the Tenant, in November or December of 2012; that the photograph does not accurately reflect the condition of the door at the time of the inspection; that he felt around the door and could not feel a draft; that he could not see daylight through the sides of the door when the door was closed; and that he did not report a problem with the door to the Landlord, as he did not believe there was a problem with the door.

The Tenant submitted a photograph of the deck off the master bedroom, which shows several deck boards are not secured to the house. The Landlord and the Tenant agree that the deck is not properly attached to the house and that the deck is in need of repair. The Tenant stated that the problem with the deck was verbally reported to the Landlord in July of 2012. The Landlord agreed that it was verbally reported, but contends it was reported in October of 2012.

The Landlord and the Tenant agree that the deck has not yet been repaired, although the Landlord has been obtaining quotes for repairs. The Landlord who is not the Respondent stated that they did not initially repair the deck because the Tenant was being uncooperative and belligerent. He stated that they did not repair the deck after the hearing in November of 2012 because the Tenant did not respond to a text message in which the Landlord attempted to make arrangements to fix the deck. He stated that the Arbitrator at the previous hearing had directed the parties to only communicate in writing, except for emergencies, and the Landlord believed that repairs could not be completed until the Tenant responded to the text that had sent.

The Tenant stated that in addition to being without the use of the deck, the delay in repairs has been inconvenient because he now must access the rear yard, which he accesses on a regular basis because he has a dog, through the laundry room. He stated that it is less convenient to use the laundry room because it has a step that is 18 inches high.

The Tenant submitted a photograph of a hole in the main deck. The male Witness for the Tenant stated that in late September or early October of 2012 a portion of his foot fell through the decking on the main deck. The Tenant stated that he reported the problem to the witness for the Landlord sometime during the latter portion of November of 2012 and that he is concerned the deck is not safe.

The Witness for the Landlord stated that in January of 2013 the Tenant showed him the hole in the deck; that he inspected the hole and determined that the decking was “spongy”; that he discussed the need to repair the deck with a co-owner of the rental unit who was not present at the hearing; that he and the co-owner agreed the repairs could not be completed until later in the year, as the deck is covered by vinyl and cannot be repaired in inclement weather; that he was not aware someone’s foot had fallen through the deck; and that he does not believe the hole poses any significant safety concern.

The Tenant is seeking compensation for being unable to use a portion of his back yard. He stated that he fenced off an area of his back yard after the dispute resolution hearing in November of 2013 to prevent his dog from interfering with the repairs to the deck off the bedroom. The Landlord contends that the Tenant was not asked to fence off the area and although the fence will facilitate repairs, the Tenant should have waited until the repairs had been scheduled.

The Landlord and the Tenant agree that there is one step leading from the laundry room door into the back yard. The Tenant contends the step is “illegal & unsafe”, because it is 18” high. The Landlord does not dispute the height of the step but contends it is safe and that the Tenant was aware of the height of the step at the start of the tenancy. The Tenant stated that he only became concerned with the height of the step after he was no longer able to access the back yard via the deck off the bedroom, as he now accesses the back yard through the laundry room door.

Analysis

I find that I have insufficient evidence to determine whether or not the dishwasher is functioning properly. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony of the Tenant, who stated that it does not function properly, or that refutes the testimony of the Witness for the Landlord, who stated that it was functioning properly when he inspected it.

As the Tenant has submitted insufficient evidence to establish that he has not been provided with a fully functional dishwasher, I cannot conclude that he is entitled to compensation for any inconvenience arising from being without a dishwasher.

In an effort to ensure the Tenant is provided with a fully functional dishwasher, I am providing the Landlord with the opportunity to have the dishwasher inspected by an unbiased qualified appliance technician and to make any repairs necessary to ensure the dishwasher is functioning properly. The Landlord has until April 30, 2013 to inspect/repair the dishwasher and to provide the Tenant with documentation from the technician that certifies the dishwasher is functioning properly.

In the event the aforementioned documentation is not provided to the Tenant by April 30, 2013, I authorize the Tenant to have the dishwasher inspected by an unbiased qualified appliance technician and to make any repairs necessary to ensure the dishwasher is draining properly. In the event repairs are required, I authorize the Tenant to withhold all or a portion of the rent until the cost of the repairs have been recovered, providing the cost of repairs are reasonable, that the cost of repairs do not exceed the cost of purchasing a new dishwasher, and providing the Tenant supplies the Landlord with a receipt for the repairs. I also authorize the Tenant to withhold rent until the cost of the inspection has been recovered, providing those costs are reasonable and providing the Tenant supplies the Landlord with a receipt for the inspection, but only if the inspection shows repairs were necessary to ensure the dishwasher is draining properly.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair 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 occupation by a tenant. There is a general legal principle that places the burden of proving an allegation on the person making the allegation. In these circumstances, the burden of proving that the Landlord has failed to comply with section 32(1) of the *Act* rests with the Landlord.

I find that I have insufficient evidence to determine whether or not the wiring in the electrical panel complies with safety and housing standards. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony of the Tenant, who stated that it does not comply with safety and housing standards or that refutes the testimony of the Landlord, who stated that it does comply with safety and housing standards. I therefore dismiss the Tenant's application for an order requiring the landlord to repair the electrical panel.

Given the potential safety hazards associated to improper electrical repairs, I grant the Tenant leave to reapply for an order requiring the Landlord to repair the electrical panel only if the Tenant is able to produce documentary evidence from an unbiased expert witness that corroborates his claim the wiring in the panel does not comply with safety and housing standards.

As the Tenant has not established that the wiring in the electrical panel interferes with the Tenant's ability to safely use and occupy the rental unit, I find that the Tenant is not entitled to any financial compensation related to the alleged need for this repair.

I find that I have insufficient evidence to determine whether or not the front door requires weather stripping. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony of the Tenant and the female Witness for the Landlord, who both stated that daylight can be seen through the sides of the door when it is closed or that refutes the testimony of the Witness for the Landlord, who stated that light cannot be seen through the side of the door when it is closed and

that is was not drafty I therefore dismiss the Tenant's application for an order requiring the Landlord to install weather stripping.

In determining the issue of the door, I did not find the testimony of the Witness for the Tenant to be particularly helpful in corroborating the testimony of the Tenant, given that she is the Tenant's girlfriend, and cannot be considered unbiased.

In determining the issue of the door, I did not find the photograph of the door to be particularly helpful, as the latch for the door handle does not appear to be fully engaged, which lends credibility to the Landlord's argument that the door was not fully closed when this photograph was taken.

As the Tenant has failed to establish that the front door needs weather stripping, I find that the Tenant is not entitled to any financial compensation related to the alleged need for this repair.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. On the basis of the evidence presented, I cannot conclude that the deck off the bedroom is a facility that is a material term of the tenancy or that it is essential to the use of the rental unit as living accommodations.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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. I find that the Landlord has the right to terminate the use of this facility, providing the Tenant is provided with compensation for a reduction in value of the tenancy, pursuant to section 27(2) of the *Act*. I therefore dismiss the Tenant's application for an order requiring the Landlord to repair the deck.

I find that the Landlord's failure to repair the deck off the bedroom represents a termination of the Tenant's right to use the deck off the bedroom. I therefore find that the Tenant is entitled to a rent reduction that reflects the resulting reduced value of the tenancy. Given that the deck is relatively small and the Tenant is able to access the rear yard through an alternate door, I do not find that the presence of the deck significantly impacts the value of the tenancy. In my view, the value of the tenancy is reduced by approximately \$25.00 per month for the period between October and March, when people generally do not sit on their decks and by approximately \$50.00 per month for the period between April and September, when people commonly use their decks.

On the basis of the testimony of the Landlord, I find that the Landlord was aware the deck was in a state of disrepair in October of 2012. I therefore find that the Tenant is

entitled to compensation of \$150.00 for the six months he has not had the full use of this deck.

I find that the Tenant has submitted insufficient evidence to corroborate his claim that the problem with the deck was reported to the Landlord in July. I therefore find that he is not entitled to compensation for being without use of the deck prior to October of 2012.

I authorize the Tenant to reduce each future monthly rent payment by \$50.00 for the period between April 01st and September 30th of any given year, until such time as the deck off the master bedroom has been fully repaired, effective April 01, 2013. I also authorize the Tenant to reduce each future monthly rent payment by \$25.00 for the period between October 01st and March 31st of any given year, until such time as the deck off the master bedroom has been fully repaired, effective October 01, 2013. In the event the parties cannot agree on whether the repairs are complete, the Tenant has the right to reduce the monthly rent by these amounts until such time as the Landlord files an Application for Dispute Resolution seeking to restore the rent to the original amount payable.

I have placed no weight on the Landlord's argument that the repairs to the deck off the bedroom were delayed because the Tenant has been uncooperative and has not responded to his text messages regarding a schedule for the repairs. The Landlord has every right to access the rental unit for the purposes of repairing the deck, providing proper notice is given in accordance with section 29 of the *Act*.

I find that the damage to the main deck, albeit potentially minor at this point, interferes with the Tenant's ability to use the main deck in the manner it was intended. Given there is evidence of structural failure, I find it reasonable for the Tenant to be concerned about using the deck. I therefore find that the Tenant is entitled to a rent reduction that reflects the resulting reduced value of the tenancy. Given that this deck is larger than the deck of the bedroom, I find the value of the tenancy is reduced by approximately \$50.00 per month for the period between October and March, when people generally do not sit on their decks and by approximately \$100.00 per month for the period between April and September, when people commonly use their decks.

On the basis of the testimony of the Witness for the Landlord, I find that the Landlord was aware the main deck was compromised in January of 2013. I find that the Tenant has submitted no evidence to corroborate his statement that the problem was actually reported to the Witness for the Landlord in the latter part of November. As there is insufficient evidence to conclude that the Landlord was aware of the problem prior to January of 2013 and it is generally not prudent to repair a vinyl deck during inclement weather, I find that the Tenant is not entitled to compensation for the delay in repairs for any period prior to March 31, 2013.

I authorize the Tenant to reduce each future monthly rent payment by \$100.00 for the period between April 01st and September 30th of any given year, until such time as the hole in the main deck has been repaired, effective April 01, 2013. I also authorize the

Tenant to reduce each future monthly rent payment by \$50.00 for the period between October 01st and March 31st of any given year, until such time as the hole in the main deck has been repaired, effective October 01, 2013. In the event the parties cannot agree on whether the hole has been adequately repaired, the Tenant has the right to reduce the monthly rent by these amounts until such time as the Landlord files an Application for Dispute Resolution seeking to restore the rent to the original amount payable.

I find that the Tenant erected a fence that limited the use of his back yard and that the Tenant had the right to remove the fence at any time. I can therefore find no reason to award compensation for any inconvenience arising from the presence of the fence.

I find that I have insufficient evidence to determine whether or not the step by the laundry room door complies with safety and housing standards. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony of the Tenant, who stated that it is "unsafe and illegal" and the absence of any documentation that establishes the housing and safety standards in regards to the height limits of a single step. I therefore dismiss the Tenant's application for an order requiring the landlord to repair the step.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$200.00, which is comprised of \$150.00 in compensation for living without a fully functional deck and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the amount of \$20.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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, 2013

Residential Tenancy Branch

