



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bright Star Investment
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC, MND, FF / CNC, MNR, MNDC, ERP, RP, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for cause / a monetary order as compensation for damage to the unit, site or property / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for cause / a monetary order as compensation for the cost of emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, tenancy began on January 1, 2000. Monthly rent and monthly parking are due and payable in advance on the first day of each month. Currently, rent is \$779.00 and parking is \$30.00. A security deposit of \$275.00 was collected at the start of tenancy. A move-in condition inspection report was completed with the participation of both parties.

In response to an application by the tenant, a previous hearing was held on April 5, 2013 (file # 807045). By decision dated April 9, 2013, the landlord was ordered to undertake certain very specific repairs and upgrades to be "completed within a reasonable period of time, but no later than May 15, 2013." As the tenant had already repainted the unit, with the exception of the kitchen, the landlord was ordered to paint

the kitchen. In the meantime, it appears that the tenant has also had the kitchen painted. All interior painting was undertaken by the tenant's family and / or friends. While there are receipts enclosed in support of the purchase of paint and painting supplies, the cost of labour is estimated on the basis of quotes provided by commercial painters.

Without any formal consultation with the landlord, and without any apparent discussion during the hearing on April 5, 2013, the tenant undertook to have testing and laboratory analysis completed in regard to the existence of asbestos in the unit. Testing / analysis focused on linoleum and vinyl tile samples taken from the unit kitchen and bathroom.

The tenant is presently recovering from surgery, and he claims that continuing to live in the unit poses a health hazard. Specifically, the tenant is concerned that the landlord has not yet begun the repairs ordered to be completed in the unit, and he is concerned about the impact on his health of asbestos removal. In the meantime, he claims to be living with his sister in a unit located in the same building. In addition to applying for cancellation of the notice to end tenancy, the tenant seeks compensation related to all the foregoing. Details of the tenant's application for compensation are set out below.

The landlord issued a 1 month notice to end tenancy for cause dated March 25, 2013. The notice was served in-person on the tenant on that same date. A copy of the notice was submitted in evidence. Reasons shown on the notice in support of its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The tenant filed an application to dispute the notice on April 2, 2013. Thereafter, the landlord's application was filed on April 5, 2013.

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

Based on the considerable documentary evidence which includes, but is not necessarily limited to photographs, discs, letters, receipts and reports, and the testimony of the parties, the various aspects of the respective claims and my findings around each are set out below.

LANDLORD

Section 47 of the Act addresses **Landlord's notice: cause**, in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

(e) the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or...

There appears to be a significant level of tension and animosity between the parties. However, there is no evidence before me of formal and timely notification(s) from the landlord to the tenant of any particular concerns about the tenancy, which ultimately led to the issuance of the 1 month notice. In summary, having carefully considered the documentary evidence and testimony of the parties, I find that the landlord has failed to meet the burden of proving on a balance of probabilities that there is cause to end the tenancy. Accordingly, the notice to end tenancy is hereby set aside, and the tenancy continues in full force and effect.

\$2,500.00: estimate of the cost of miscellaneous repairs to the unit.

The landlord testified that this aspect of the application reflects an estimate of costs for cleaning and / or repairs of miscellaneous damage to the unit and to the parking stall. However, the landlord's evidence does not include documentary evidence of cautions given to the tenant or instructions given to the tenant in relation to any specific matters of concern. Further, as the cost claimed is an estimate, there are no receipts in evidence to support the landlord's claim for recovery of any particular costs. In the result, this aspect of the application is hereby dismissed.

\$50.00: filing fee.

As the landlord has not succeeded with the principal aspects of his application, the application to recover the filing fee is hereby dismissed.

TENANT

Order instructing the landlord to make emergency repairs for health or safety reasons &

Order instructing the landlord to make repairs to the unit, site or property

I find that the tenant's application for an order instructing the landlord to make repairs was decided in the decision of April 9, 2013. Specifically, orders were made to undertake certain repairs pursuant to sections 32 and 62 of the Act. As previously noted, a deadline for the completion of the repairs was set at May 15, 2013. The orders issued include an order to replace the linoleum in the kitchen and bathroom. In the result, I decline to further address these aspects of the tenant's application with the following exception:

I HEREBY ORDER THE LANDLORD to review the results of asbestos – related analysis of flooring provided by the tenant, as necessary, with officials at Work Safe BC, the Ministry of Environment, and the City of Vancouver, in order to

- i) determine the level of immediate risk, if any, to the tenant's health
- ii) seek information around the safe and proper removal of the linoleum
- iii) seek information around the safe and proper disposal of the linoleum
- iv) seek information around appropriate replacement material(s) for the linoleum.

\$168.00: *asbestos testing;*

\$312.00: *asbestos testing;*

\$63.00: *lab testing of asbestos.*

As noted in the decision dated April 9, 2013, section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and the landlord was ordered to replace the linoleum in the kitchen and bathroom. There is no evidence that replacement of the linoleum was considered to be an “emergency repair” as defined in section 33 of the Act which speaks to **Emergency repairs**. Neither was the order to replace linoleum made contingent upon testing and analysis of floor samples. Further, there is no evidence that the tenant previously raised this particular concern directly with the landlord and requested testing or analysis. In summary, I find that the tenant undertook the initiative to have samples of flooring tested / analysed, and I find that the landlord ought not to bear the burden of the associated costs. This aspect of the application is therefore hereby dismissed.

\$892.72: *estimated cost of labour to paint.*

\$103.73 (\$38.73 + \$65.00): *painting supplies + paint.*

It was noted in the decision of April 9, 2013 that the useful life of interior paint is 4 years, and the Arbitrator found that the interior paint within this unit was “well beyond” the useful lifespan. Again, I note that the estimate reflects a rate quoted by commercial painters.

\$1,750.00: *cost of alternate living arrangement with family (35 days x \$50.00 per day: March 25 to April 29)*

Even if I were to find on a balance of probabilities that the tenant is paying the amount claimed, which I do not, I note that the *per diem* for a 30 day month, based on the tenant's monthly rent of \$779.00, is approximately \$26.00 ($\$779.00 \div 30$).

\$50.00: *filing fee*.

As the tenant has achieved some success with his application, I find that he has established a nominal level of entitlement to recovery of the filing fee.

With the exception of the tenant's claim for costs associated with asbestos which has been dismissed, I find that the tenant has established entitlement to compensation arising from all other aspects of the application in an amount which is equal to one and one half (1 ½) months' rent. Accordingly, given my expectation which is that when this decision is received by the parties, rent will have been paid in full for May, I hereby order that the tenant may withhold payment of all rent due for June (\$779.00), and half of rent due for July (\$389.50). This finding does not affect the tenant's continued obligation to pay the \$30.00 fee assessed for monthly parking.

Conclusion

The landlord's application is hereby dismissed, such that the notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

One order has been issued to the landlord.

The tenant may withhold full payment of rent for June, and half payment of rent for July 2013.

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: May 1, 2013

Residential Tenancy Branch

