



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDC, OLC, RP

Introduction

This hearing dealt with an application by the tenant for orders compelling the landlord to comply with the Act, regulation or tenancy agreement and to make certain repairs, limiting the landlord's right of entry, and awarding the tenant financial compensation for loss of use of property, damage to personal property and loss of quiet enjoyment. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Should an order for repairs be made and, if so, on what terms?
- Should an order be made compelling the landlord to have the neighbour's belongings removed from the yard and, if so, on what terms?
- Should the tenants be granted a monetary order and, if so, on what terms?
- Should any restrictions be placed on the landlord's right of entry and, if so, on what terms?

Background and Evidence

This tenancy commenced May 1, 2012 as a one year fixed term tenancy to continue thereafter as a month-to-month tenancy. The monthly rent of \$1050.00 is due on the first day of the month. In addition, the tenants are responsible for the utilities. The tenants paid a security deposit of \$500.00.

There is a written tenancy agreement which includes a fairly detailed addendum to the standard Residential Tenancy Branch agreement. One clause particularly relevant to this dispute is: "Tenants must know that the use of the shop in the backyard is to be used at your own risk to due to the fact that the state of the roof is very poor."

The building referred to a shed, one half of which is closed in and the other half of which only has a roof. Each side is approximately 200 square feet. At the beginning of the tenancy the neighbour S had items stored in the open side of the shed. S also has a garden shed, which is approximately 2 feet by 4 feet in size; a lumber pile approximately 12 feet by 3 feet by 3 feet in size; and a trailer stored at the back of the property.

This winter the landlord formed the opinion that the tenants had extra people living with them and wanted to raise the rent accordingly. The tenant obtained information from the Residential Tenancy Branch about the procedure a landlord should follow to raise the rent and relayed this information to the landlord.

The landlord and the tenants then had a series of discussions in an attempt to negotiate a new tenancy agreement. The landlord wanted a rent increase and the tenants wanted undertakings that the landlord would have the shed repaired and S's items removed from the property by a particular date included in the tenancy agreement, as well as a penalty clause if the landlord failed to meet those undertakings. The negotiations culminated in a face-to-face meeting on February 28, 2013. The parties were ultimately unable to come to a new agreement.

The landlord sent the tenant a note saying she wanted the tenancy to end at the end of the fixed term. The tenants obtained information from the Residential Tenancy Branch about the means by which a tenancy such as theirs could be ended and relayed that information to the landlord.

The tenants found talking to the landlord on the telephone irritating and time consuming. In addition, they wanted to have a written record of all interactions between them so they had a record in the event they ever ended up at arbitration because they felt the landlord had not lived up to her oral undertakings. On March 11 the tenant sent the landlord an e-mail which stated, in part: "Due to the present difficulties, we request that all further communication be either performed in writing (email or letter) or in person. Please note that for 'in person' interaction we required a minimum 24 hours notice and all such discussions may be recorded to maintain an accurate record."

The tenants say the landlord had promised orally to have S remove his items from the property and to repair the roof on the shed. The landlord testified that she had wanted to fix the shed roof but did not have the money, as other expenses, which are detailed below, arose that made it impossible for her to repair the shed. With respect to S's items, by the end of the adjourned date of the hearing the landlord was taking the position that there was no written undertaking to have S remove his items; S was a good and helpful neighbour to her; and the presence of those items did not inconvenience her when she lived in this house and they did not pose a particular inconvenience to the tenants.

During this tenancy several repairs have been required:

- The tenants installed a new dishwasher and new light fixtures with the prior consent of the landlord. \$600.00 was deducted from the December rent to compensate the tenants.
- The furnace quit in November. The tenants acknowledge that the landlord had it repaired within two days.
- In the winter there was a leak which caused damage to the carpet in a basement room. The leak was fixed within three weeks. The landlord had a contractor remove the damaged carpet but the floor has remained as bare concrete since March.
- At the end of July the hot water tank quit. The tenants confirmed that a temporary repair was completed within 48 hours and the hot water tank was replaced within five days. The landlord testified that the repair cost \$1 150.00.

As stated in the tenancy agreement the shed was in poor condition at the start of the tenancy. On March 25 the tenants sent the landlord an e-mail advising that the roof on the back shed "is in imminent danger of collapse" and asking that S's items be removed from the open side of the shed as soon as possible so they could place their items there.

On March 30 the roof collapsed. The landlord has had a contractor remove the debris from the collapsed portion of the shed. The open portion of the shed is still there but is leaning badly.

The tenants had some items stored in the closed portion of the shed which they say were damaged when the roof collapsed. They had a 17 foot fibreglass canoe which they had purchased and put in the shed about two weeks before the roof collapsed. The tenant testified they placed it against the outside wall to minimize any possible damage. The damage to the canoe is a buckled gunnel and a hole in the floor and sidewall. The tenants say they paid \$300.00 to have the canoe re-fiberglassed. The tenants paid cash and have no receipts for the purchase or the repairs.

The tenants also stored their motorcycles in the shed. The tenants valued one bike at \$5500.00 and the other at \$3500.00. The tenants claim \$21.48 to replace damaged mirrors and \$59.19 to replace damaged handlebars.

The tenants did not carry any tenant insurance.

In June the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause in the prescribed form. The tenants challenged that notice in a separate application for dispute resolution and were successful on that application.

The tenants ask for orders that the remaining portion of the shed be emptied and repaired and that S's items be removed from the property on two grounds:

- The landlord's oral undertakings represent an amendment to the written tenancy agreement.
- The shed and yard are part of their tenancy and therefore part of the landlord's duty to repair.

The tenants also ask to be compensated for the loss of use of the shed at the rate of \$25.00 per month from September to June and \$50.00 for June.

The tenants ask for an order that the flooring in the basement bedroom be replaced. They also ask for an order compensating them for loss of that room in the amount of \$50.00 per month for March, April, May and June. The tenant testified that this room is only occasionally used by them as a guest room.

The tenants ask for compensation in the amount of \$546.25 for loss of quiet enjoyment. This is calculated as 4.75 hours at \$115.00 per hour. The tenants argue that the landlord's attempts to raise the rent and to end the tenancy, her delay in having the basement fixed, and her refusal to fix the shed or have S remove his items amount to harassment and intimidation tactics. The 4.75 hours also represents the time the tenants have spent talking to the landlord or responding to her text messages after they told her they only wanted to communicate by e-mail, the time they have spent researching residential tenancy law, and the time they have spent responding to the landlord's attempts to raise the rent and to end the tenancy. \$115.00 is the rate the male tenant charges when he does work as an electrical engineering consultant.

The landlord argues that:

- She is a 26 year old tree planter who works in Northern Alberta and British Columbia for six months of the years. She testified that it's not always that easy or convenient for her to send or receive email.
- That the tenants' refusal to talk to her on the telephone makes arranging repairs more difficult than necessary.
- She has limited financial resources and has dealt with more pressing repairs in a prompt and timely manner.
- When she lived in this house she never put anything valuable in the shed.

- Not only did this community experience a very heavy snowfall this year, the snow lasted from Thanksgiving to May making it impossible for anything to be moved out of the yard.

The tenants also ask for an order limiting the landlord's right of entry. This relates to the landlord's notification that she intends to have someone inspect the property once a month. There is no evidence of the landlord ever entering the unit without giving advance notice or without the tenant's permission.

Analysis

Should an order for repairs be made and, if so, on what terms?

The tenancy agreement explicitly and implicitly excluded certain portions of the property from the tenancy agreement. It explicitly excluded a room that was reserved for the use of the landlord. Accordingly, the rent paid by the tenants did not include any payment for this room. The effect of the clause that stated that the tenants used the shed at their own risk was to implicitly exclude it from the tenancy agreement. Because of its described condition, the shed had minimal value. Accordingly, rent did not include payment for the use of the shed either.

I accept the tenants' evidence that the landlord said she intended to fix the shed but I also accept the landlord's evidence that while this was a repair she wanted to make it had to be prioritised with other necessary repairs. This is not a situation where the landlord has not made any repairs to the rental unit during the tenancy. On the contrary repairs to heat and water, even though they are expensive, have been made promptly. I find that the conversations between the landlord and the tenants on this issue were an expression of the landlord's intentions, not a binding amendment to the contract. Accordingly, no order for repair of the shed will be made.

The landlord does have an obligation to replace the carpet in the downstairs bedroom. Considering the repairs that have been required in the past year I am prepared to grant the landlord some time in which to make those repairs. I order that the new flooring must be installed in the basement bedroom by October 31, 2013. If the new flooring is not installed by that date the tenants may deduct \$50.00 per month from the rent, starting November 1, 2013, and continuing until the repair has been made, the tenancy ends, or an arbitrator orders that the deduction may no longer be made.

Should an order be made compelling the landlord to have the neighbour's belongings removed from the yard and, if so, on what terms?

A tenant is entitled to expect vacant possession of the rental unit. The tenancy agreement did set out that one room in the house would be reserved for the landlord's

use. The tenancy agreement does not specify that someone else's property may be stored in the yard for the duration of the tenancy. I order that S's storage shed, wood pile and trailer be removed from the rental unit by October 31, 2013. If these items are not removed from the rental unit by that date, the tenants may deduct \$50.00 from the rent, starting November 1, 2013, and continuing until the repair has been made, the tenancy ends, or an arbitrator orders that the deduction may no longer be made.

Should the tenants be granted a monetary order and, if so, on what terms?

I have already held that the shed was excluded from the tenancy agreement so no compensation for loss of use of the shed will be made. With respect to the basement bedroom the tenants emphasized that it was only occasionally used. The room is useable; it just does not have flooring. I find that the reduction in value of the tenancy agreement caused by lack of flooring in this room is nominal and I award the tenants compensation flooring in the basement bedroom in the amount of \$5.00 a month for March, April, May, June, July, and August; a total of \$25.00.

The tenants' claim for damage to the items stored in the shed has a number of problems. First of all, the tenants had signed a written agreement which stated they used the shed at their own risk. Secondly, the tenants do not have any documentation in support of the claim for repairs to the canoe. Thirdly, section 7(2) of the *Residential Tenancy Act* requires any landlord or tenant claiming compensation for damage or loss to do whatever is reasonable to minimize the damage or loss. This was explained to the tenants in an e-mail from the Residential Tenancy Branch on April 12 which stated: "It is important to note that both the tenant and the landlord have a duty to minimize loss. For the landlord, this means that as soon as they were aware the garage roof was in danger of collapsing, they may have been required to fix the roof within a reasonable amount of time. For the tenant, this may mean they might not want to store expensive items in a high risk area. If neither the tenant nor the landlord mitigated their losses, it would be up to an Arbitrator to determine where the responsibility lies." The tenants knew the shed was "in imminent danger of collapse" but they continued to store expensive items in a high risk area. Even if the landlord was responsible for damage caused by the collapse of the shed, the tenants did nothing to mitigate their loss. Nothing will be allowed for damage to the tenant's belongings.

Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment gives an explanation of the types of behaviours that may be considered an interference with a tenant's right to quiet enjoyment. Nothing described in this hearing comes close to the behaviour described in the *Guideline*. Although the landlord's attempts to collect more rent and to end the tenancy reflect her lack of experience and lack of knowledge about landlord tenant procedures they do not amount to harassment or intimidation.

The tenants' attempt to restrict communication to e-mail and letters only was unreasonable. No compensation will be awarded for the time the tenant spent on the telephone with the landlord.

In summary, the tenants are awarded \$25.00 for the lack of carpet in the basement bedroom. All other claims for financial compensation are dismissed.

Should any restrictions be placed on the landlord's right of entry and, if so, on what terms?

Section 29(1) of the *Residential Tenancy Act* allows a landlord to inspect a rental unit monthly. This is all the landlord has said she intends to do. There is no evidence of the landlord ever entering this unit without giving prior notice or obtaining the tenant's permission. This application is dismissed.

Conclusion

- a) An order that the new flooring must be installed in the basement bedroom by October 31, 2013. If the new flooring is not installed by that date the tenants may deduct \$50.00 per month from the rent, starting November 1, 2013, and continuing until the repair has been made, the tenancy ends, or an arbitrator orders that the deduction may no longer be made.
- b) An order that S's storage shed, wood pile and trailer be removed from the rental unit by October 31, 2013. If these items are not removed from the rental unit by that date, the tenants may deduct \$50.00 from the rent, starting November 1, 2013, and continuing until the repair has been made, the tenancy ends, or an arbitrator orders that the deduction may no longer be made.
- c) A monetary order in favour of the tenant in the amount of \$75.00, comprised of damages in the amount of \$25.00 and the \$50.00 filing fee paid by the tenant for this application, is made. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.

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: August 22, 2013

Residential Tenancy Branch

