Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0906218 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNR, MNDC, RR, FF

These hearings dealt with the Application for Dispute Resolution of the Tenant requesting an order that a two month Notice to End Tenancy be cancelled, for monetary orders for the cost of emergency repairs and for compensation for damage or loss under the Act or tenancy agreement, for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord, and to recover the filing fee for the Application.

Both parties appeared at the hearing and both were represented by legal counsel at the first hearing. The Landlord did not have a lawyer at the second hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

The first hearing before me in this matter was held on September 12, 2013, and dealt with the primary issue of a Notice to End Tenancy for Landlord's use of the rental unit. The monetary issues raised by the Tenant were adjourned to November 4, 2013.

At the first hearing it was found that the Notice to End Tenancy was valid and it was not cancelled. An Interim Decision was made on September 17, 2013, and the Interim Decision should be read in conjunction with this Decision. The monetary issues were adjourned to November 4, 2013, and this Decision addresses those claims.

The parties were involved in one earlier hearing in July of 2013, before a different Arbitrator, and the file number for that hearing is set out on the cover page of this decision (the "July Decision").

I also note that the initial Application of the Tenant requested a monetary order of $23,489.00, although the amount sought was amended to $17,489.00, prior to the November 4, 2013 hearing.

As the amount of the monetary order is less that originally sought and would not prejudice the Respondent, I allow the Application to be amended to the lesser amount.

Issue(s) to be Decided

Is the Tenant entitled to monetary orders for the costs of emergency repairs?

Is the Tenant entitled to monetary compensation under the Act or tenancy agreement, including the loss of quiet enjoyment, or loss of use of facilities or services?

Background and Evidence

This tenancy began in October of 2009, with a different owner of the property. The Tenant testified that the rent was $600.00 per month. The current Landlord argues that the rent was $1,000.00 at the outset of the tenancy and was reduced to $600.00 for specific reasons. Both parties have submitted copies of the two tenancy agreements, each dated the October 15, 2009. In one of the tenancy agreements the rent is set out as $1,000.00, and in the second tenancy agreement the rent is $600.00. There is little other difference between these two agreements. No security deposit was paid.

As described above, the tenancy ended under a Notice to End Tenancy issued by the Landlord and the Tenant testified he had vacated the rental unit before the end of September 2013.

In or around June of 2011, the current Landlord took over ownership and operation of the rental unit property. The rental unit itself consists of a cabin style, single family residential building, with some yard around it. There are smaller cabins in the immediate area which are apparently occupied by other renters.

It was found in the July Decision that there was water ingress into the basement as well as septic leakage in the basement, backing up through the plumbing into the rental unit. It was also found that there was “significant mould” accumulating in the rental unit. The Landlord was ordered to make emergency repairs. It appears from the evidence before me that the Landlord addressed the septic situation; however, they did not make any

further repairs as they determined they would be demolishing the rental unit and issued the Notice to End Tenancy for this purpose.

The Tenant's Claims

The Lawyer for the Tenant summarized that the Tenant is making four claims against the Landlord:

1. For damage to personal property and for compensation for work performed at the rental unit in the nature of emergency repairs;
2. For loss of quiet enjoyment of the rental unit;
3. For loss of services or facilities at the rental unit; and
4. To recover the filing fee for the Application.

The Tenant claims that personal property of his was destroyed by the mould. The Tenant claims $250.00 for a leather jacket, $125.00 for a leather briefcase, $350.00 for black leather riding boots, $200.00 for brown leather riding boots, $50.00 for a leather belt, $25.00 for a hat, and $500.00 for furniture, totalling **$1,500.00** for this portion of the claim. In support of this claim the Tenant has provided photographs of some of the items claimed for. The Tenant testified that none of this property had been replaced.

The Tenant claims $7,884.00 for work he performed at the rental unit which he claims he should be compensated for, as follows:

> The Tenant claims **$2,240.00** for work performed in November and December of 2011 consisting of cleaning heavy smoke staining in the rental unit and for cleaning mould, for repairing holes and cracks in walls and ceilings, dismantling cupboards to prepare for painting, and to paint the above. An invoice is supplied from the Tenant in support of this claim.
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> The Tenant claims **$2,688.00** for work performed in April and May of 2012 consisting of removing an old deck and rebuilding the deck with new and used materials. The Tenant supplied an invoice in support of this claim and I note the invoice states that 50% of the materials were supplied by the Agent for the Landlord.
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> The Tenant claims **$672.00** for work performed in May of 2012 consisting of cleaning, painting and sealing portions of the basement, and has supplied his invoice in support of this claim.

The Tenant claims **$2,284.80** for work performed in December of 2012 consisting of digging a ditch around the foundation of the property and repairing drainage tiles, repairing the exterior wall and applying sealant, and installing drainage pipe and drainage rock fill. An invoice has been supplied by the Tenant in support of this claim. I note the invoice states that all materials were supplied by an Agent for the Landlord.

The Tenant claims **$305.00** for the purchase of appliances and the removal of the old appliances and hauling away a moldy carpet from the rental unit. The Tenant testified he bought a used washing machine and a fridge and paid approximately $40.00 each for these, while the balance of this claim was for his time and use of his truck.

The Tenant is claiming for the return of 50% of the rent paid since this Landlord came into ownership of the rental unit property in the amount of **$7,800.00**, for loss of quiet enjoyment and loss of services or facilities.

The Tenant claims that he and his daughter experienced a loss of quiet enjoyment at the rental unit, due to the actions of the Agent for the Landlord at the rental unit.

The Tenant alleges he was singled out by the Agent for the Landlord and taken advantage of because the Tenant suffers from post traumatic stress. The Tenant alleges he asked to rent a different rental unit at the property, but the Agent for the Landlord refused, allegedly telling the Tenant he could not afford the rent for the other unit. The Tenant alleges he was taken advantage of by the Agent for the Landlord as he performed all the work above, then was not compensated for this.

The Tenant testified that the Agent yelled at his 16 year old daughter and was peeking in the windows of the rental unit during a period when only his daughter was staying in the rental unit.

In evidence the Tenant has supplied an unsigned, undated letter ostensibly from his daughter. She writes that she is 16 years old and she stayed in the rental unit for time periods while her father was away. The daughter writes that the house has always been in poor condition and that her father has done a lot of work at the rental unit. She describes problems with water leaking into the rental unit and with sewage.

The daughter writes that during the last trip while the Tenant was away, the Agent for the Landlord swore at her, and threatened to call the police when she had friends over. The daughter writes that she recalls the exact words of the Agent for the Landlord as,

> "Is your dad home yet? This is a shit show; I will call the police if I hear any music or dogs barking. I don't care if I have to call them to come here 5 or 6 times a day." [Reproduced as written.]

The daughter writes she felt uncomfortable around the property as she thought the Agent might return, "... and start hassling me again." [Reproduced as written.]

The daughter writes she is concerned whenever she walks around the property. She writes that she is not used to people yelling or swearing at her. She alleges the Agent for the Landlord only mows the lawns for the other renters in the area, but not the yard for the subject rental unit.

The Tenant testified he got upset with the Agent for the Landlord and sent a letter to the Agent's supervisor in March of 2013. The Tenant asked the Agent's supervisor to terminate the relationship between the Tenant and the Agent. The Tenant did not want to have anything to do with the Agent for the Landlord. The Tenant testified that after this the Landlord would no longer communicate with the Tenant and, "... put up walls."

Landlord reply to the Tenant' Claims

The Agent for the Landlord submitted that the tenancy had been fairly quiet until the spring of 2013, when the Tenant demanded $7,880.00 for work he had performed at the rental unit.

The Agent asserts he was mowing the lawn at the rental unit until around the time the Landlord refused to pay the invoices of the Tenant, because the Tenant forbade the Agent from coming onto the rental unit property after this refusal.

The Agent testified that the Tenant had left the rental unit property to go to Mexico for 10 weeks during the winter and left behind his 15 or 16 year old daughter. The Agent was informed that his daughter would be there. The Agent testified that when the daughter moved into the rental unit there was no food there for her. The Agent testified it was just the daughter and the pet dogs in the rental unit. He submitted that some of the neighbours felt sorry for her and gave her food.

The Agent testified that at one time he noticed the Tenant's daughter was not attending the rental unit for a few days, and he did look through the window, to check on the rental unit. The Agent was concerned that no one was taking care of the rental unit or the dogs in the unit, in the absence of the Tenant or his daughter. The Agent testified he

could hear the dogs barking inside the rental unit and when he looked through the window he could see their feces and urine on the floor in the rental unit.

The Agent testified that the Tenant did return home for his daughter's birthday and then went back to Mexico.

The Agent for the Landlord testified that the police did attend the rental unit on two occasions. The Agent testified that due to the daughter being on her own for extended periods of time and because of the friends she was having at the rental unit, he had called the authorities responsible for family and child services as he was concerned for her welfare. The Agent also alleged that the pet dogs had been taken into custody by the S.P.C.A. as they had been left alone for some time.

The Representative of the Landlord testified that when they received the invoices for $7,880.00 from the Tenant they thought these were made up. They testified that the Landlord had never agreed to pay these invoices.

The Landlord denies any knowledge of a mould issue in the rental unit and submits they knew nothing of this until the July Decision hearing. A hazardous materials engineer did a survey following the July Decision and this is what ultimately led to the Landlord's plan to demolish the rental unit.

The Representative of the Landlord testified that from a business perspective it made no sense to try and remediate the rental unit property. However, the Landlord does acknowledge there were indicators of mould in the rental unit. The Landlord argues that there are moisture problems which caused the mould. The Landlord alleges these were partly due to the lifestyle of the Tenant as he was not using vent fans and did not adequately heat the rental unit. The Landlord submits that with these types of rental unit buildings the renters should be cleaning with a mild solution of bleach every two weeks, in particular due to the single pane windows.

The Representative of the Landlord testified that when they took the pictures of the rental unit in October of 2013 to submit into evidence for this matter, there was not a single square foot of mould in the rental unit. The Landlord alleges the mould was caused by the Tenant and the affects were exaggerated by him. The Agent for the Landlord submits that the Tenant did not heat the rental unit properly or take the same steps to clean the mould as the other renters in the immediate area. The Agent for the Landlord testified he did see the mouldy personal property of the Tenant.

The Landlord denies any knowledge of the Tenant suffering from post traumatic stress.

The Agent for the Landlord testified he had worked for the prior owner of the property and continued on with this current Landlord when they took ownership.

The Agent testified that the rent under the original tenancy agreement was going to be $1,000.00. The Agent acknowledged that the rental unit had been left in a mess by the previous renters and needed cleaning and work. He testified that the Tenant was very excited to rent this property, and the Tenant told the Agent that he was a carpenter and he could do some work on the rental unit and would clean it up and make it liveable.

The Agent testified that the original agreement the prior landlord had with the Tenant was that the Tenant would supply the labour and they would supply him with the materials. The Agent testified that this is why the rent was reduced to $600.00 per month. The Agent explained the rent was never returned to $1,000.00, and remained reduced by $400.00 per month for the entire tenancy. The Agent testified that the Tenant's part was to fix the rental unit up and make it liveable.

The Landlord submitted photographs of the rental unit apparently taken in October, after the Tenant vacated the property. The Agent testified that the photos indicate that none of the work the Tenant is claiming for was finished and all the work was substandard.

The Agent explained that there had also been a dispute with the Tenant over outstanding hydro bills and some arrangement was made where the Tenant would do work for approximately $2,300.00 in unpaid hydro bills. The Agent submitted that the Tenant agreed to do work on the drainage system to work off this hydro bill and the Landlord would supply materials. In evidence the Agent for the Landlord has supplied a series of emails exchanged with the Tenant discussing the drainage work, the hydro bill and the Tenant doing work in lieu of paying the hydro bill.

The Agent further testified that the used appliances the Tenant brought into the rental unit were removed by the Tenant at the end of the tenancy. He explained the Tenant was never entitled to free laundry under the tenancy agreement.

In reply to the Landlord, the Tenant explained he had never agreed to be the ongoing caretaker at the rental unit. He testified the initial discount for rent was for work required on the furnace and heating at the rental unit, which was not done properly. This led to poor heating for the rental unit building.

The Tenant explained he had a friend of his checking on his daughter and the rental unit on a daily basis. He explained the S.P.C.A. was satisfied the pets were being looked

after. He testified the police attended the rental unit because a friend of his daughter was having some sort of issues with a prescription drug.

The Tenant testified he cleaned the rental unit constantly, "... to beat the mould back." He explained he was constantly dealing with leaks in the basement and kept the temperature in the rental unit at 68 F. He testified he had completed the exterior work at the house, trying to stop the water ingress.

The Tenant testified he went to the Agent for the Landlord often looking for help in maintaining the rental unit. He testified that the Agent constantly assured him that the Landlord supported the work he was doing, but then the Agent or the Landlord would not supply the materials as they had promised.

At the end of the hearing the parties discussed some property left behind by the Tenant at the rental unit. The Tenant explained he had abandoned this property and the Landlord could dispose of it. The Agent for the Landlord testified that the Tenant had removed the appliances claimed for. The Tenant explained he had given some of his property to a local person and he probably took the appliances.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

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. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the above, the evidence and testimony and on a balance of probabilities, I find as follows.

I find the Tenant had some form of agreement with the previous owner of the property that reduced the rent in exchange for the Tenant doing carpentry work, cleaning, and making the rental unit property more liveable. I find this to be the most likely reason the prior owner would reduce the rent. If it had been a temporary reduction due to the furnace or some other reason, it is more likely the prior owner would have raised the rent once the furnace issue was addressed. While the Tenant argues the furnace was never repaired properly, I found there was insufficient evidence to support this allegation.

I find that the Agent for the Landlord must have informed the current Landlord of this arrangement, as the rent reduction carried on following the transfer in ownership to this current Landlord, in accordance with the tenancy agreement signed on October 15, 2009, for $600.00 per month in rent. In any event, under the Act the current Landlord was bound by the tenancy agreement made with the previous owner and the Tenant. In effect it went along with the rental unit to the current Landlord.

The difficulty here is the terms of the original agreement are vague as to what the exact role of the Tenant would be in exchange for the ongoing rent reduction. The Tenant has one version of events and the current Landlord has an equally plausible version. I do accept the evidence that whatever this arrangement was, it appears to have been satisfactory to both parties, up until around the time the Tenant began demanding payment for his labour and sending the Landlord invoices.

Regardless of this vagueness, under section 32 of the Act the Landlord was required to provide and maintain a residential property in a state of decoration and repair that complies with 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 the Tenant.

I find that the Landlord failed to properly address the mould issue in the rental unit, in breach of section 32 of the Act. I base this in part on the testimony of the Agent for the Landlord stating he saw the mouldy possessions of the Tenant, and in part on the

ongoing issue of water in the basement of the rental unit which was known to the Landlord, as early as December of 2012 or January of 2013.

I find this to be the approximate date, as the Agent for the Landlord was supplying materials to the Tenant at this time for repairing the drainage around the building and for the repairs being made to seal off the basement. The Agent for the Landlord should have been reporting these issues to the Landlord at this time. For this portion of the claim I find the Tenant has suffered a loss of use of the basement portions of the rental unit due to the breach of section 32 by the Landlord and I award the Tenant **$900.00**, comprised of $100.00 a month for the nine months between January and September of 2013. When considering the amount of this award, I take into account the Tenant was away from the rental unit for extended periods of time, not just for the Mexico trip, but also for work purposes in different geographic locations, such as he was at the time of the first hearing in this matter. I also note that the Tenant's daughter was an occupant of the rental unit and not a tenant under the Act. Nevertheless, when the Tenant is away from the rental unit he is not suffering a loss of quiet enjoyment.

I find the Agent for the Landlord should not have swore at the Tenant's daughter or looked into the rental unit. I find there was one instance of each of these and these constitute a breach of quiet enjoyment of the rental unit in this particular case. The preferred steps for the Agent would have been to not swear at the daughter, to have served the Tenant a 24 hour notice to inspect the rental unit and to not just peek into the windows. I do understand that the Agent may have had some concerns due to the barking dogs left alone in the rental unit. Therefore, I allow the Tenant the nominal sum of **$50.00** for these breaches of quiet enjoyment.

I find that some of the work the Tenant undertook should have been done by the Landlord as it met the standard in the Act of emergency repairs. Under section 33 of the Act damaged pipes or major leaks, blocked water or sewer pipes, are considered emergency repairs.

I find the Tenant should not have been compelled to dig up the foundations around the property and repair the drainage system. I find this goes beyond what any reasonable person would accept as carpentry or cleaning and painting to make a rental unit liveable, in exchange for a rent reduction of $400.00 per month.

However, I also accept the evidence of the Landlord that the Tenant had done this work in exchange for outstanding hydro electric bills being paid by the Landlord. The evidence contained in the emails between the Agent for the Landlord and the Tenant appear to support that there was an arrangement that had been made for work on the

foundation in exchange for the Tenant's hydro bills being paid. I note that hydro electricity was not included in the rent and this was the Tenant's responsibility under the tenancy agreement. Therefore, I find the Tenant has already been compensated for this portion of his claim and I dismiss it without leave to reapply.

As for the other invoices claimed for by the Tenant, I dismiss these without leave to reapply. I find that the Tenant had insufficient evidence to prove this work was performed by him in exchange for additional compensation from the Landlord over and above the reduced rent. The evidence indicates the Tenant benefitted from reduced rent from October of 2009 until the end of the tenancy in September of 2013, nearly four years where the rent was reduced by $400.00 per month, or approximately $18,800.00 in total reductions to the Tenant. I find this reduction was most likely to compensate the Tenant for the ongoing work at the rental unit he would have to do. I find that the Tenant had insufficient evidence to prove there was a contract with the Landlord for him to do the work set out in his invoices for additional compensation over and above this reduced rent.

I do not allow the Tenant's claims for appliances. These appliances were removed at the end of the tenancy and by the Tenant's own admission, appear to have been removed by a friend of the Tenant.

I find the Tenant has proven his personal property was damaged by mould at the rental unit. I find this was attributable to the Landlord's breach of section 32 of the Act. However, the Tenant also had the onus to prove the value of these items. His only evidence on the value of this property was his testimony and his written submissions, and these appear to be based on the cost of the items when he purchased them. There are no comparables presented to gauge the value of this property. Furthermore, the photographs depict these items were all used when they were affected by the mould. Therefore, I award the Tenant nominal sums and depreciated values for these items, in the amount of **$750.00**

Lastly, as the Tenant achieved limited success here, I allow him only a portion of the $100.00 filing fee for the Application, in the amount of **$50.00**

Therefore, I grant the Tenant the total monetary award of **$1,750.00**, comprised of the above described awards. The Tenant is granted a monetary order in these terms, enforceable in the Provincial Court, Small Claims Division.

Lastly, I caution both parties regarding the reasons the Landlord ended this tenancy.

The Act contains a provision in section 51(2), which requires additional compensation to be paid to the Tenant in certain circumstances. In this instance, this would apply if the Landlord fails to demolish the rental unit:

> …
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> (2) In addition to the amount payable under subsection [51](1), if
>
> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 27, 2013

Residential Tenancy Branch