



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Al Stober Construction
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, regulations or tenancy agreement; for the landlord to make repairs to the unit, site or property, For an Order for the landlord to provide services or facilities required by law; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and other issues.

The tenant and four agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. The tenant stated he has not received the landlord's evidence. The landlord's agent provided a registered mail tracking number for when evidence was sent and this shows a card was left by Canada Post for the tenant. The tenant is deemed to be served the landlord's evidence five days after it was sent pursuant to s. 90(a) of the *Act*. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?
- Is the tenant entitled to an Order for the landlord to provide services or facilities required by law?
- Is the tenant entitled to reduce his rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this tenancy started on March 01, 2012 although the tenant took possession of the unit on February 22, 2012. Rent for this unit is \$730.00 per month of which \$15.00 is for laundry.

The tenant testifies that there are many issues that affect his tenancy and his quiet enjoyment of the rental unit. The tenant seeks compensation from the landlord and although the tenant has not stated on his application a monetary amount for compensation the tenant orally states at the hearing that he wants an amount equivalent to his life insurance. It was discussed with the tenant that the maximum amount allowed under the *Act* is \$25,000.00 for monetary claims; the tenant orally requests an amount of \$25,000.00 in compensation.

The tenant testifies that a registered letter was sent to the previous building manager in May 2012 concerning the bath spout, the bathroom sink faucet and the kitchen faucet leaking. The tenant did not provide evidence of this letter or registered mail tracking numbers. The tenant testifies that it took the landlord until December 23, 2013 to look at

the bath spout and this repair was not completed until January, 2014. The tenant testifies that the sink taps still leak occasionally.

The tenant testifies that the leaking taps have created high moisture levels in the unit which has caused some mildew or mould over the last 19 to 20 months. The tenant testifies that this has made him sick and he has had to go to see the doctor with flu like symptoms.

The tenant testifies that when he takes a shower the water temperature fluctuates drastically as there is no regulator on the water system. The tenant testifies that this has caused him difficulties when taking a shower because the water will either get cold or scold him if someone else in the building uses any water.

The tenant testifies that the window in the living room is only a single paned glass. When the wind blows and it is raining the wind forces water through the window which drips down the sill onto a baseboard heater located below the window.

The tenant testifies that prior to moving into the unit he asked the building manager if it was a noisy building. The building manager assured the tenant it was quiet. The tenant testifies that he was misled as he is woken up with sirens from emergency vehicles, traffic noise and noise from the train. The tenant testifies that there is little or no installation in the building to deaden any noise and the tenant can even hear his neighbour in her unit when the tenant is wearing ear plugs.

The tenant testifies that the elevator in the building repeatedly breaks down. If it breaks down on a Friday and there is a long weekend it does not get repaired until the following Tuesday. The landlord will put up an out of order notice on the elevator but this is unacceptable as there are some tenants using walkers who cannot manage the stairs. The tenant testifies that the elevator has broken down six to eight times since 2012. The tenant testifies that on February 18, 2014 the tenant was trapped in the elevator for

around 10 minutes. The tenant testifies that he pressed the alarm button repeatedly but no one came; and the elevator then just started working again.

The tenant testifies that when it snows the landlord does not clear the roads and pathways on the property regularly. The metal emergency steps are also not cleared and get very slippery.

The landlord's agents dispute the tenant's claims. The landlord's agent testifies that they have records pertaining to this tenant's history of his tenancy but there is no record of a registered mail letter being sent concerning the faucets in February 2012. The landlord testifies that there is however a record of a phone call from the tenant to the then building manager. It is documented that the manager called the tenant back twice but there was no answer. The manager and a plumber went to the tenant's unit and the plumber repaired the bath spout in May, 2012. The landlord testifies that they have not heard anything from the tenant since that time about any other repairs.

The landlord's agent testifies that in December, 2013 they received a complaint from the tenant's neighbour about the sound of continuous running water in the wall shared between this tenant's unit and the neighbouring tenant. Between December 01 and December 12, 2013 the landlords investigated the cause of this running water and sent notices to the all tenants in the area to try to determine where the water was running from. It was determined that it was coming from this tenant's unit so a Notice of Entry was posted on December 13, 2013. On December 16, 2013 the landlord and a plumber went to the tenant's unit and found the bath spout was running hot water continuously. The plumber made a temporary repair and had to obtain some parts. The permanent repair was made on January 15, 2014. The landlord testifies that the plumber has indicated in a letter provided in the landlord's documentary evidence that due to the brown scale on the bathtub it is evident that the water must have been running for some time. However, the tenant did not notify the landlord of this. The tenant never mentioned any leaking from the other taps at this time either.

The landlord's agent testifies that the tenant has never brought to the landlords attention about the shower water fluctuating in temperature. The landlord's agent testifies that they have 72 other tenants in the building and have received no complaints from any other tenants concerning this. Tenants have to regulate the water flow with the hot and cold taps as only disabled units are required to have a regulator installed.

The landlord testifies that the plumber stated that due to the hot water running over a long period and with the high temperature setting in the tenant's unit this has created condensation on the windows due to the cold temperatures outside. This condensation will run down the windows onto the sill and this may have caused the surface mildew noted on the wall. The landlord's agent testifies that it is the tenants responsibility to clean up the condensation and the landlords have noted that the window sills and frame are not clean which creates discoloured drips.

The landlord's agent testifies that the tenant was sent a letter from the landlord advising the tenant that the building manager would come into clean the mildew from the walls and the windows to determine if the problem returned. However, the tenant would not allow the building manager access to his unit. The tenant was also asked to notify the landlord if the windows leaked the next time it rained so the landlord's agents could investigate this. However, the tenant has not done so and the landlord's agents are unable to investigate this further.

The landlord's agent testifies that the tenant has never notified the landlord about any noise issues and no other tenants have complained about noise in the building. The tenant has to accept that there will always be some normal living noise in a multi unit building. Any external noise is not within the landlord's control. The landlord's agent testifies that this building was built in 1978 and there are no problems with the insulation. The landlords maintain and upkeep the building regularly and have done many upgrades to the building and grounds.

The landlord disputes the tenants claim concerning the elevator. The landlord's agent testifies that the landlord has 18 buildings and the elevators are tested monthly. Once in a while an elevator will break down. When this occurs the elevator company is contacted immediately and they come out to make repairs as soon as possible. They will come out on a weekend but any repairs may take a couple of days due to their work schedule. The landlord testifies that they were not notified that the tenant was trapped in the elevator on February 18, 2014 or that the emergency alarm was not working. The alarm is checked monthly as part of the elevator service.

The landlord disputes the tenants claim concerning snow removal. The landlord's agent testifies that they have a contract with a snow clearing company. This company comes out to clear snow when it reaches one and a half inches. The landlord refers to their photographic evidence showing the clear roadways and sidewalks on the property. The managers will also clear snow from these areas. The landlord's agent testifies that the snow clearers push the snow to the side and this does not block any access. The landlord's agent testifies that with regard to the metal stairway; this is an emergency exits and it is kept clear. When the tenant pulls his car into the parkade he is opposite the elevator and can use that rather than the metal stairs located at the far end of the parkade.

The tenant seeks an Order for the landlord to repair the faucets in the bathroom and kitchen, to put a regulator on the shower water flow; to look at and deal with the mildew or mould; to replace the window; to investigate the noise levels; to upgrade the insulation; to repair the emergency alarm in the elevator; to ensure repairs are made promptly; and to ensure snow is cleared regularly.

The tenant seeks an Order for the landlord to comply with the *Act* with regard to these issues, to ensure the building is suitable maintained and to protect the tenant's right to quiet enjoyment of his rental unit. The tenant testifies that the landlords are not providing services or facilities required by law. The tenant testifies that he wants the

landlord to insulate the building correctly to current building codes. The tenant testifies that the building is also collapsing and the tenant wants the landlord to investigate this.

The tenant seeks an undisclosed rent reduction for repairs, services or facilities agreed upon but not provided. The tenant refers to his photographic evidence showing snow banks and states this makes it difficult to get his car onto the road and, a light snow covering on the metal steps.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for \$25,000.00 in compensation;

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I am not satisfied that the tenant has shown that a letter was sent to the landlords in 2012 concerning the leaking faucets. I am surprised if the tenant was worried about these faucets why, if a letter was sent, did the tenant not follow up with it for 18 months or more Even when the bath spout was running continually it was a neighbor of the tenants that notified the landlord of the sound of running water and not the tenant. A tenant is required to put in writing any repair issues to the landlord and then allow the landlord access to remedy any issues. If the tenant does not notify the landlord then in a building of this size it would be almost impossible for a landlord to determine that a tenant needed repairs carried out. A tenant must also mitigate any loss by allowing the landlord access to the tenants unit to investigate any repairs and in this

case I am satisfied that the tenants did not do so when the landlords requested access to look at the leaking windows, mildew or mould.

With regard to the fluctuation in the tenants shower; there is insufficient evidence that the tenant has notified the landlord of an issue with the water temperature in the tenants shower and that this issue is not caused by the tenants actions in not setting the water correctly when taking a shower.

With regard to the condensation issue, mildew or mould and leaking window; due to the tenant's failure to notify the landlord of the running water issue. This type of problem could have been prevented had the tenant dealt with the running hot water promptly by notifying the landlord when the bath spout first failed to turn off correctly. During cold periods, any extreme heat or hot water steam will create condensation in a unit particularly on windowpanes. Tenants are responsible to clean up any condensation. I further find when the landlord wrote to the tenant requesting access to deal with the mildew or mould and condensation the tenant refused the landlord's agent access to the unit. If the tenant had allowed the landlord's agent access the landlords may have been able to determine the source of the condensation and taken preventative measures once the leaking bath spout was stopped.

With regard to the tenants claim concerning a loss of quiet enjoyment due to noise levels both externally and internally; the landlord cannot control any external noise from traffic, emergency vehicle sirens or trains. If the tenant wanted to live in a quiet area away from this type of external noise the tenant should have made his own investigations prior to renting the unit and cannot now hold the landlord responsible for external noise. Concerning the noise from the tenant's neighbor; the tenant has provided insufficient evidence to show that there is a lack of insulation in the building that allows for noise transfer between units. When a tenant resides in a building with many other tenants, unless the tenant can show that the noise transfer is extreme or is beyond normal living noise then the tenant must expect to have some noise transfer between his unit and his neighbors.

With regard to the tenants claim concerning the elevators; I am satisfied from the landlord's documentary evidence and testimony before me that the elevators in this building are regularly maintained each month. Elevators will break down and again this is something beyond the landlords control as long as the landlord has maintained them. The tenant has insufficient evidence to show that he was trapped in the elevator for 10 minutes or that the emergency alarm failed to work in February, 2014.

With regard to the tenants claim that the landlords are not clearing the snow adequately; I am satisfied from the landlord's documentary evidence and testimony provided that there is a snow clearance contract in place which is carried out on a regular basis whenever there is snow laying more than one and half inches on the ground. The landlord has provided a list of dates that show the snow clearance company has come out to the building and pushed the snow to the side. The tenant's photographic evidence does show some snow banks but also show the roads relatively clear. There is a photograph of the metal steps with a light dusting of snow, as this is under one and half inches then I have no evidence to show that these steps are not cleared regularly.

Consequently, the tenants claim for compensation for the above issues is dismissed without leave to reapply.

With regard to the tenants claim for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; I find the tenant has insufficient evidence to show that the landlord has not complied with the *Act* as noted above. Consequently this section of the tenants claim is dismissed without leave to reapply.

With regard to the tenants claim for an Order for the landlord to make repairs, I am not prepared at this time to issue any Orders for repair. The tenant has not notified the landlords in writing of repairs to be made to the faucets and the tenant has refused entry to the landlord to investigate any other issues concerning the window leaking, or for mildew or mould. However, as the landlord has been made aware of these issues now at this hearing I am prepared to Order the landlord to post a Notice to Enter the unit to

carry out an investigation of the tenants concerns regarding the leaking faucets in the bathroom and kitchen, the leaking window and the mildew or mould on the wall. The tenant must not obstruct the landlord's right to enter the unit after written Notice has been posted. If the landlord finds repairs are required then the landlord must inform the tenant in writing of which repairs will be made and a time line in which any repairs will be completed. If no repairs are required then the landlord should also inform the tenant of this decision. The landlord should also investigate the emergency alarm on the elevator in the event it has malfunctioned since the last inspection or service of the elevator took place. If the landlord does not carry out these investigations and if repairs are required and not made, the tenant is at liberty to reapply for an Order for the landlord to repair the unit.

With regard to the tenants claim for the landlord to provide services or facilities required by law. The tenant has insufficient evidence that the building is not insulated up to building code or that the building is collapsing. I have suggested to the parties that if these concerns require investigation that the parties contact the City department dealing with building codes. This section of the tenants claim is dismissed without leave to reapply

With regard to the tenants claim for a rent reduction for repairs, services or facilities agreed upon but not provided; as I have found the tenant has insufficient evidence relating to this claim for repairs, services or facilities I am not prepared to allow the tenant to reduce his rent at this time. This section of the tenants claim is dismissed with leave to reapply in the event the landlord finds repairs are required and fails to make them in a timely manner.

Conclusion

The tenants claim for monetary compensation is dismissed without leave to reapply.

The tenants claim for the landlord to comply with the *Act* and for the landlord to provide services or facilities required by law is dismissed without leave to reapply.

The tenants claim for the landlord to make repairs and to reduce rent for repairs is dismissed with leave to reapply.

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 07, 2014

Residential Tenancy Branch

