Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PALOMAR SYNERGY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation for damage or loss under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The Tenant had one witness appear. Both parties, and the witness, provided affirmed testimony; and the parties 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 Matter

The parties were involved in one prior Application for Dispute Resolution, which was the Application of the Tenant. For ease of reference the prior file number is reproduced on the cover page of this decision. In the first instance, the Tenant's Application was dismissed with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant makes two monetary claims in this Application, one for damages due to a personal injury on the rental unit property, and the second for compensation under section 51 of the Act alleging the Landlord failed to do what they stated the purpose of

ending the tenancy was for. The third request involves an allegation the Landlord is withholding the personal information of the Tenant.

This tenancy began on November 15, 2011, with the parties entering into a standard form written tenancy agreement, which had one addendum attached. The monthly rent at the start of the tenancy was $800.00 per month, payable on the first day of each month. The rental unit consists of a manufactured home in an established manufactured home park. The Landlord owned the home and rented to the Tenants under the *Residential Tenancy Act*.

The Tenant testified that when her and her husband, the Co-Tenant, moved into the rental unit they noticed there were planks in wood deck around the home that were "spongy". The Tenant alleges that around this time, November of 2011, that one of the Agents told her that the deck and stairs would be repaired. The Tenant submits that the repairs were not done until after June 15, 2013.

On or about August 8, 2012, the Tenant emailed the Landlord and explained the steps and the small deck at the front and back of the home are not safe because they are rotting. The Tenant explained that the Co-Tenant had replaced some of the boards and requested the Landlord to, "Please advise."

On or about August 8, 2012, one of the Agents for the Landlord replied and asked for more information,

> "... How much work needs to be done/How much work has already been repaired? I think you also mentioned that it is the front and back steps/deck that needs some work?"
>
> [Reproduced as written.]

The Tenant replied and explained some of the boards had been replaced, but there were still spongy boards the Tenants were worried about.

The Tenant testified that the Landlord did not have anyone out to inspect the deck or make repairs to it until after June 15 of 2013.

The Tenant testified that on June 14, 2013, a rotten board on the deck gave way and she fell through the hole in the deck. The Tenant testified that she pulled herself out of the hole and saw the decking around the hole was not stable. The Tenant testified that she injured her right leg as it fell through the rotten board.

The Tenant testified that she had a large abrasion around the upper portion of right leg and that a nail or board caused an abrasion on her skin. The next day the Tenant attended a clinic and was seen by a doctor. In evidence the Tenant provided a short medical note from the clinic. The doctor examined the Tenant and noted she had a bruise on her upper thigh and an abrasion. The Tenant was given a tetanus shot. The doctor notes it is a right leg injury.

In evidence the Tenant has also provided photographs of the bruise with a tape measure used to demonstrate the size of the bruise. The bruise is oval shaped and the longest portion of the bruise is approximately seven inches long. There is a photograph of a small abrasion as well.

The Tenant testified that she experienced pain and was shocked at the amount of time the bruise took to heal and for her to recover. The Tenant testified that she took over the counter pain and muscle relaxation medications. She testified it took five to six weeks to fully recover. She testified that she was restricted in what activities she could do.

The Tenant testified that the Agents for the Landlord visited the property on June 15, 2013, and the hole was pointed out to the Agents. According to the evidence and testimony the Agents had come to the rental unit to serve the Tenants with a notice of rent increase.

The Tenant was upset that during the inspection on June 15, 2013, one of the Agents for the Landlord commented to her about the accident that, “shit happens”, or words to that effect. The Tenant felt this was an unconscionable statement.

The Tenant testified that she is 60 years of age and not working, so she is not claiming for loss of wages. The Tenant requests $50.00 a day for the time it took to recover from the injury.

The Co-Tenant testified that he took the photographs of the Tenant’s leg and injury. He testified that he did see her suffer and she did not sleep well for a time after the injury. He testified they took the photographs periodically after the injury. He testified that he was not happy she got hurt, and stated he could verify what the Tenant had testified to.

He went on to testify that on or about June 17, 2013, the Landlord had a crew spend two weeks replacing all the decks. He testified that he found the Agents for the Landlord extremely difficult to deal with as they always came together and they never provided notices of their intent to visit the rental unit.

The Witness for the Tenant testified that she saw the bruise on the leg of the Tenant on the same weekend that the injury occurred, and saw her often following the injury and each time saw the bruise. The Witness testified that the Tenant and her had attended aqua-fit classes and did regular walks together prior to the injury. She testified that the Tenant was unable to join her for these activities for months after the injury.

The Agents for the Landlord did not cross examine the Witness; however, they wanted to cross examine the Co-Tenant regarding his statement that the Agents would just show up unannounced with no notice. The Agents asked the Co-Tenant if they had been to the rental unit any other time except for the instance where they gave the notice of rent increase. The Co-Tenant did not dispute that the Agents had only been there one time and that was for the notice to increase rent.

They further questioned the Tenant regarding her testimony about the alleged unconscionable statement. The Tenant clarified which of the Agents had made the comment and explained the particular Agent had said, “Sorry, but as they say, shit happens.”

In regard to the second portion of the Tenant’s claim, the Tenant testified that on or about July 15, 2013, the Tenants requested the Landlord address the ongoing issue of flooding at the park in the winter and its affect on the rental unit. The Tenant points out in the letter that she suffered an injury already and points out the Landlord has to do something to maintain safety for the Tenants.

On July 30, 2013, the Landlord replied in a letter that the best way to address the Tenants’ issues would be to appoint a resident caretaker to oversee the property. For that reason, the Landlord explained in the letter, it was necessary to end the tenancy with the Tenants.

The Landlord included with the letter a Two Month Notice to End Tenancy for the Landlord’s use of the rental unit (the “Notice”) dated July 30, 2013, and indicated in the Notice that the Landlord intends to covert the rental unit for use by a caretaker, manager or superintendent of the property. The Notice had an effective date of September 30, 2013.

The Tenants vacated the rental unit on or about September 15, 2013.

The Tenant alleges the Notice was given in bad faith, as the Landlord did not have caretaker move into the rental unit until December 13, 2013. The Tenant has included

several ads from local newspapers indicating a rental unit for rent which does not mention a request for a caretaker to occupy the rental unit. The Tenant alleges the ads were for their rental unit and that they had to vacate the rental unit before September 30, in order for the caretaker to occupy the rental unit, despite the Landlord not having the caretaker ready at that time. The Tenant alleges the Notice was simply given to get rid of her and her husband.

The Agents for the Landlord declined to cross examine the Tenant on this testimony.

The Tenant's last claim involves the Agents for the Landlord copying the drivers licenses of the Tenants to get identification at the outset of the tenancy. The Tenant alleged that the Landlord should not have taken this information. They request the Landlord provide evidence that the information has been destroyed.

In reply to the Tenant's first claim, the personal injury, the Agent for the Landlord testified that they first saw the hole in the deck on June 15, 2013, and the Landlord then had all the decking repaired.

The Agent submits that the Landlord is relying on the four part test found in other Residential Tenancy Act claims and argued the Tenant had not met the burden to prove her claims.

The Agent testified and submitted that they were not even sure the pictures in evidence from the Tenant were of the Tenant, since her face did not appear in the photographs. They submit that the photographs are subjective evidence and that the medical note indicates that the Tenant provided the information to the doctor and the note indicates the Tenant requested a tetanus shot.

The Agents argued that the evidence of loss of the Tenant is highly subjective and there is no objective basis for the Tenant to request $50.00 a day in compensation.

The Agents further argue that the Tenant could have obtained more medical information from her own doctor and this would have provided more objective evidence as to the extent of the injury. The Agent emphasised that the Tenant suffered no loss of wages, and did not provide receipts for pain or muscle relaxant medications.

The Agents also testified that the Tenant had no proof of mitigation, and in fact, the letter of August 22, 2012, caused the Agents to presume that the Co-Tenant was doing the repairs himself. They argue the Landlord went nine months without hearing anything further from the Tenant about the condition of the deck.

The Tenant cross examined the Agents and asked why they did not send someone out to inspect the deck. The Agents replied that they understood the Tenant to have said that the Tenants would fix the deck and said they would fix the deck.

One of the Agents argued that the Tenants had permission from the Landlord to repair the deck. The other Agent stated that in fact the Tenants should not have done any repairs to the deck as they had no permission in writing to make these repairs. The Agents then submitted that the Tenants had asked for permission to repair the deck themselves.

As to the second claim of the Tenant, the Agents replied that the Notice was given in good faith because they needed someone at the property to report emergencies and look after things.

The Agents testified that they found an appropriate caretaker in November of 2013, although the caretaker did not move into the rental unit until December 15, 2013. The Landlord submits that the caretaker could not move into the rental unit until December because the caretaker had to give one month of notice to his prior landlord.

In evidence the Landlord submitted a redacted copy of the tenancy agreement with the caretaker that was signed and dated as December 27, 2013. In an addendum to this tenancy agreement the parties agree the rent has been reduced as the new renter will perform certain caretaking duties at the park, which are enumerated.

As to the third claim of the Tenant, the Agents testified that they did write down the numbers of the Tenants drivers' licenses; however, the Agents testified that they have now shredded this information.

On cross examination by the Tenant both Agents individually agreed they had destroyed the drivers' license information.

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 acted reasonably to minimize the damage or loss.

In regard to the Tenant's first claim, under section 32 of the Act, the Landlord is required to maintain the rental unit, as follows:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this instance, I find the Tenant has proven the Landlord breached section 32 by failing to maintain the stairs and decks at the rental unit.

I accept the evidence that the Tenant notified the Landlord in writing of rotting planks on the deck and stairs at the rental unit, in August of 2012. The Agents acknowledged this email in August of 2012 as well.

Once the Landlord was notified of these issues, the Landlord should have had an Agent inspect the problems as soon as possible. Stairs to enter a property are integral to a renter accessing the rental unit. The deck of a property is there for the renter to enjoy and use as part of the rent paid. Moreover, a reasonable person would know that rotting planks on stairs and decks are a safety issue and should be addressed in a reasonable amount of time.

In this instance, I find the Landlord failed to act in a timely fashion to even inspect the rotting stairs and deck complained of. The photographs provided by the Tenant of the deck indicate that the boards are severely rotted out and I find this indicates the boards had been in a state of disrepair likely for some time prior to the tenancy even beginning. It appears the deck and stairs were not maintained at all, save for a few minor repairs that were made by the Tenants.

In fact, I find the Tenant acted to mitigate potential losses by having some of the boards repaired by the Co-Tenant, when in fact, the Landlord was obligated under the Act to do these repairs in a timely manner once notified by the Tenant.

I also find that the Tenant's evidence is persuasive that she suffered a loss, through pain and suffering, due to the breach of the Act by the Landlord. The photographs indicate a deep and large bruise, and one can surmise that with an injury such as this, the Landlord is fortunate that the Tenant did not injure herself more seriously, such as by breaking a leg. The photographs indicate a significant, not minor, bruise.

I also accept the Tenant's Witness testimony that this injury caused the Tenant to miss out on her normal recreational and exercise activities.

The Tenant has little evidence as to the actual value of the loss she suffered. I do find that the amount of $50.00 a day is somewhat subjective, although I recognize that it is unlikely that many renters would know how to calculate a personal injury loss, which according to my understanding, requires comparisons to case law where Judges have made awards for similar injuries. I note the Tenant did supply a breakdown of this portion of the claim outlining the $50.00 a day was for three and a half months.

Nevertheless, section 67 of the Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
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> [Reproduced as written.]

In this instance, I find that the Tenant informed the Landlord that repairs were needed and the Landlord failed to even inspect the property for more than 10 months after this notice from the Tenant. In fact, the Landlord did not address repairs until after the Tenant had suffered this injury, and then it appears the repairs were concluded very quickly.

I find on a balance of probabilities that it is likely the Tenant had experienced a loss of use of the deck for much of this time, excluding the two or three months of winter weather in this area.

I further find that the breach of the Act was avoidable, had the Landlord acted in a reasonable amount of time to address the Tenant's complaints. I also find that the evidence indicates the Tenant suffered for at least two months and possibly a bit more.

Based on these findings, I find that the appropriate amount to award the Tenant for this loss would be reflected by the amount of rent paid during her period of pain and suffering, and during the loss of ability to carry on with her normal activities. I am also taking into account that the Tenant would not have had full use of the property rented due to the inability to use the entire deck due to its extremely poor condition.

Therefore, taking all these factors into consideration, and pursuant to section 67, I award the Tenant the equivalent of two months of rent for the losses she suffered due to the Landlord's breach of the Act, in the amount of **$1,600.00**

As for the second claim by the Tenant, regarding the Notice given by the Landlord for use of the rental unit by a caretaker, once the Notice has been acted on, it is too late for the Tenant to argue that it was issued in bad faith. Such a claim would have to be made if the Tenant was disputing the Notice prior to acting on it.

Nevertheless, as argued by the Tenant, under section 51(2) of the Act a Landlord is required to take steps within a reasonable period of time after the effective date of the Notice to accomplish the stated purpose for ending the tenancy.

> **51** (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> ...
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> (2) In addition to the amount payable under subsection (1), if
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> (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.
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> [Reproduced as written.]

In this instance, I find the Landlord acted prematurely in issuing the Notice, as they had not even found a caretaker prior to issuing the Notice. The caretaker did not occupy the rental unit until nearly four months after the Tenants had vacated the rental unit due to the Landlord's Notice.

I do not find that taking nearly four months for the caretaker to occupy meets the requirement of taking steps within a reasonable amount of time to accomplish the stated purpose for ending the tenancy. Therefore, I find that the Landlord has breached section 51(2) of the Act, and accordingly, I must order the Landlord to pay the Tenant the equivalent of two months of rent in the amount of **$1,600.00.**

Lastly, as to the third portion of the claim, I accept the affirmed testimony of the Agents for the Landlord that they have destroyed the drivers' license numbers of the Tenants.

As I find the Tenant's claims had merit, I award her the filing fee for the application in the amount of **$100.00.**

Therefore, I find that the Tenant has established a total monetary claim of **$3,300.00** comprised of the above described amounts and the $100.00 fee paid by the Tenant for this application.

I grant the Tenant an order under section 67 for the balance due of **$3,300.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant has proven the Landlord breached the Act by failing to maintain the rental unit and has breached the Act by failing to take steps in a reasonable amount of time to accomplish the purpose set out in the Notice to End Tenancy. The Tenant is awarded **$3,300.00** in compensation, which includes the filing fee for the Application.

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: August 19, 2014

Residential Tenancy Branch