



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RP RR LAT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on October 2, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to obtain Orders to have the Landlord comply with the Act, regulation or tenancy agreement; make repairs to the rental unit site or property; authorize the Tenant to change the locks; and allow the Tenant reduced rent for services or facilities or repairs agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?
2. Should the Landlord be ordered to comply with the Act, regulation, or tenancy agreement?
3. Should the Tenant be granted an Order to change the locks on his rental unit?
4. Is the Tenant entitled to reduce his rent?

Background and Evidence

In support of his application, the Tenant submitted photographs of the rental property and copies of written repair requests issued to the Landlord.

The parties agreed that they entered into a verbal tenancy agreement that commenced sometime in the spring of 2012. Rent is payable on or before the first of each month in the amount of \$375.00 and the Tenant paid approximately \$200.00 as a security deposit in February or March 2012.

The rental unit was described as a former laundry room that had been converted into a single room occupancy rental unit with a shared kitchen and bathroom. The Landlord submitted that the building was originally built as a grocery store with a small residence, more than 50 to 60 years ago. The Landlord stated that he and his family have leased the property for just over 3 years and have added a barber shop and two single room occupancy rental rooms to the grocery store operation. The staff from the barber shop and small grocery store shares the kitchen and bathroom with the two tenants.

It was undisputed that the relationship between the Tenant, Landlord and other occupants of this building, began to deteriorate in June or July 2014. The parties attended dispute resolution on August 12, 2014 to hear matters pertaining to the Landlord's application to end the tenancy early which was dismissed; and on August 26, 2014 to hear matters relating to the Tenant's application to cancel a 1 Month Notice issued for cause, during which the Tenant was successful and the tenancy remained in effect.

The Tenant now seeks \$1,000.00 for compensation for loss of quiet enjoyment and for not having a secured or locked rental room. He argued that he has been the victim of thefts and has been locked out of his unit on two separate occasions, which caused him to have to enter through a small window.

He clarified that his room is just off of the kitchen and that the into his room door had always been off of the hinges so he brought the door inside his room and leaned it up against the door frame and secured it with a metal pole to keep his property safe and secured. There is a second door in his room that leads to the outside which has a deadbolt lock and a latch lock on the inside. He stated that on two occasions when he was out, someone entered his room by removing the interior door and locked inside latch on his exterior door, preventing him access into his unit.

The Tenant was also seeking repairs to the drainage system, his interior bedroom door, and the floor in his room. The Tenant explained how the kitchen sink drain plugged during the summer and caused the grey water to flow into the laundry sink that was located in his room. The sink in his room overflowed and caused a flood in his room so the Landlord decided to remove the cleanout cap from the drain pipe located immediately outside his room on his patio. The Landlord put a hose/pipe into the clean out hole and ran it across the patio and out into the lawn where all the water from the kitchen sink would drain. The Tenant argued that this was a health hazard and began to attract insects and bugs. He said someone removed the hose/pipe and now the gray water just drains onto his patio and smells bad.

The Tenant submitted that since their previous hearings the Landlord had his interior door installed and had a locksmith install a deadbolt lock; however, they did not install a door handle but left the inside mechanism in the hole. This mechanism causes the door to latch when it is closed and locked which prevents the Tenant from being able to open the door without sticking something in the hole to turn the mechanism. The Tenant is requesting that a door handle be installed on his interior door so he can open and close his door.

The Tenant testified that the floor has broken away in an interior corner of his room, leaving a small hole directly to the outside. He argued that when he was cleaning up his room he stepped in that section of his room and his foot went through the floor.

The Landlord testified that he re-routed the drainage system so that the kitchen gray water would run outside and argued that this was required as a direct result of the Tenant stuffing coffee grounds and food scraps down the sink and plugging the drain. He stated that he did not have a municipal permit allowing him to reroute the gray water away from the sewage system and out into the yard.

The Landlord confirmed that the Tenant's interior door was reinstalled a few weeks ago without a door handle. He argued that the current mechanism requires an antique door handle which is costly and hard to find, so that is why the door has remained without a handle.

The Landlord argued that this Tenant has started to cost him too much money because the Tenant is constantly breaking things and demanding repairs. The Tenant is also fighting with other occupants and the staff in the barbershop. The Landlord argued that the hole in the floor was caused by the Tenant himself and the Tenant has also broken several windows, as discussed in the previous hearing. The Landlord noted that the kitchen window had been broken just the other day.

In closing, the Tenant confirmed that he had leaned a metal door, he had collected, up against the kitchen window and it cracked. He disputed that he did anything wrong to cause his foot to go through the floor; rather, it broke because it was old and was in an area where it was not supported by a floor beam. He was still concerned that someone had been entering his room even since the door had been installed.

The Landlord stated that his copy of the deadbolt key had been stored in a drawer behind the store counter where staff could easily access it. Prior to ending the hearing I gave the Landlord an Oral Order to immediately have all keys that access the rental unit moved and stored in a locked secure place, where regular staff and other tenants could not access them. The Landlord stated that he would place the key(s) in his store safe.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the 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 a tenant.

Neither party disputes that when the kitchen sink became blocked and the laundry room sink overflowed, the Landlord altered the flow of the kitchen gray water away from the regular sewer line and out into the yard; that the Tenant’s interior door was installed without a door handle; and that there is a hole in the floor in the Tenant’s room, leading directly to the outside.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant’s use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Section 67 of the Residential Tenancy 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.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the evidence supports the Landlord has willingly accepted rent money from this Tenant and has been happy to do so for over two years, as long as the arrangement has not cost the Landlord any effort or money to maintain the rental unit in a state that complies with the Act. This is supported by the Landlord's refusal to call a plumber and taking action to reroute the plumbing out into the open yard. Therefore, I find the Landlord's actions or inactions as the case may be; have caused the Tenant to suffer a loss of quiet enjoyment. That being said, I note that the Tenant ought to have brought his concerns forward at an earlier date in order to mitigate the extent of his loss.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the above, I find that the tenant is entitled to nominal damages for the loss of quiet enjoyment, and I award him compensation in the amount of **\$50.00**, which may be deducted from his next rent payment.

I accept that the lack of repairs to the kitchen drainage, the rerouting of the gray water to drain into the sewage system; the floor; and the door handle are all significant breaches of section 32 of the Act, and each item poses a significant health and safety risk. Accordingly, I make the following orders:

- 1) The Landlord is ordered to hire a licensed plumber to unplug the kitchen drainage system, to reseal the exterior drainage pipe, and have the gray water drain back into the proper sewage system and not the laundry sink, no later than **November 7, 2014**;
- 2) The Landlord is ordered to have a working door handle installed on the Tenant's interior door, no later than **November 7, 2014**;
- 3) The Landlord is ordered to seal off the hole that is located in the floor in the tenants room to prevent cold, insects, or rodents from gaining access through the hole, no later than **November 7, 2014**;
- 4) The Tenant is ordered to reduce his rent from \$375.00 to \$250.00 per month until such time as the repairs are completed.

For clarity, the Tenant **must** grant the Landlord and contractors access to the unit to conduct the repairs. On November 1, 2014, the Tenant is to pay **\$200.00** for the

month's rent which is the reduced rent of \$250.00 less the \$50.00 award for nominal damages.

The Tenant's rent will remain at \$250.00 until the repairs are completed. If the Landlord completes the repairs by the required timeframe, the rent returns to \$375.00 starting December 1, 2014, and the Tenant must pay the full amount of \$375.00 from December 1st, onward.

If the Landlord fails to comply with the above orders, then the Tenant will continue to pay rent of \$250.00 per month and may file another application to seek further compensation.

After consideration of the Landlord's actions and his responses, or lack thereof, to the Tenant's repair requests, I find it necessary to caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

Conclusion

The Tenant has been successful with his application and has been ordered to pay a reduced rent of **\$200.00** for November 1, 2014.

The Landlord has been issued orders to immediately store the rental unit key in a secure place where other's cannot access it and to repair the unit, as listed above, no later than November 7, 2014, pursuant to section 62 of the Act.

In the event the Landlord fails to comply with the repair orders, the Tenant's rent will be reduced to \$250.00 per month and the Tenant has been granted liberty to seek further compensation.

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: October 24, 2014

Residential Tenancy Branch

