



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, RR, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord provided evidence that a 10 Day Notice was personally served to the tenant on March 12, 2015. The tenant confirmed receipt of the 10 Day Notice and, in response, filed for dispute resolution. Landlord RP testified that she received the tenant's Application for Dispute Resolution hearing package on March 20, 2015. I accept that the tenant was duly served with the 10 Day Notice and the landlord was duly served with the tenant's Application for Dispute Resolution hearing package. The landlord also made an Application for Dispute Resolution. The landlord testified that the Application for Dispute Resolution was served to the tenant by registered mail on March 20, 2015. I find the

tenant deemed served with the landlord's Application for Dispute Resolution, on March 25, 2015, 5 days after its registered mailing.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent and for damage or loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

Is the tenant entitled to reduce rent as a result of a failure of the landlords to provide services or facilities under the Act?

Is either the tenant or the landlords entitled to recover the filing fee for their applications from the other party?

Background and Evidence

This one year fixed term tenancy began on February 1, 2013. A copy of the residential tenancy agreement was submitted as evidence at this hearing. The rental amount of \$1100.00 was payable on the first of each month. The landlords continue to hold the tenant's \$550.00 security deposit paid on January 1, 2013. While the tenant had a dog, no pet deposit was required.

Landlord RP testified that the tenant had not paid rent for March 2015 or April 2015. Both parties testified that the tenant continues to reside, with his family, in the rental unit. The tenant testified that he raised several concerns with the landlord over the course of his tenancy. The tenant testified that he had asked the landlords, before the start of the tenancy and once the tenancy began if there had previously been a marijuana grow operation in the residence. He testified that he was told there had never been a marijuana growing ("grow") operation in the residence but that he later learned there had in fact been a marijuana grow operation in the residence. The tenant testified that, as a result of the issues arising out of this tenancy, he ceased paying his rent.

The tenant testified that, based on the receipt of information about a previous grow operation existing in the residence and issues with respect to the state of repair of the residence, he verbally requested the landlord arrange inspections with regard to; electrical, plumbing, air flow/temperature in the kitchen, mold, dilapidated stairs among other poorly functioning aspects of the residence. The landlords did not meet any of the tenant's requests. He testified that he eventually took matters into his own hands and called professionals to investigate the issues within his residence.

The tenant testified, supported by reports from a handyman service company that the soffits from the garage needed to be removed and that insulation and vapour barrier needed to be installed to properly insulate the kitchen. He testified that it was extremely cold in the kitchen and a wind would blow through the room sometimes. The handyman company also recommended replacement of decking including upgrading the support of the deck. The tenant testified that, as a result of the dilapidated deck, his daughter fell on more than one occasion. The handyman invoices with work order recommendations were, according to the tenant, provided to the landlords. The tenant's undisputed testimony is that no action was taken by the landlords to address any of the concerns raised by the handyman company.

The tenant also testified that the plumbing was not functional within the unit and that the bathroom often flooded, seeping through to the downstairs unit. He testified, but had no receipts in support, that he paid a plumber to rectify the issue with the flooding. He also testified that several chemical items, illustrated in pictures that he submitted, were found in his boiler/storage room. He testified that he was advised those chemicals were dangerous. He did not provide any supporting evidence with respect to that claim.

The tenant also testified that the utilities bills were very high for several months because the downstairs neighbour was running a large electrical heater. He testified that his bill for electricity was, for the months of January to March 2015, significantly higher than they had been in previous years. The tenant testified that, when he discovered this anomaly and its source, he contacted the landlords. Landlord RP's undisputed testimony was that she immediately advised the downstairs neighbours to stop using this large heater. Both parties confirmed that the downstairs tenant has now stopped using the heater.

The tenant also testified, with supporting documentary evidence that the landlords rental property was found to be in violation of city by laws with respect to electrical wiring. A copy of the original investigation report was submitted into evidence as was the direction to repair and the final notice indicating that the repairs had been done and the city was satisfied with those repairs. I note that the investigative report and work order regarding steps for repair stated;

...the electrical system has been compromised and does not conform to the requirements [*of the city by-law*]...the service of a Licensed Electrical Contractor is required to perform a safety check and repair of the electrical system...

Fifteen days were provided to the landlord by the city to correct the safety issues as of October 24, 2014.

In response to the tenant's claims, Landlord RP stated;

- there has never been a grow operation at this residence;
- they were not aware and do not believe there are any issues with the deck or other exterior areas;
- the tenant is too particular about the temperature and air in the kitchen;
- they were never advised that his daughter had fallen on the deck;
- they had asked for a receipt for the plumbing and never received one;
- the chemicals downstairs were from a prior tenant and they were told they could use them for gardening;
- the matter of the high electrical bill was addressed immediately by the landlords but the tenant is still responsible for his portion of the bill;
- that the electrical repairs were minor, relating only to a wire sticking out from the house.

The tenant acknowledged that he has not paid rent for March 2015 or April 2015.

The tenant testified that he would not have rented this property for his family if he had been aware it previously housed a marijuana grow operation.

Analysis

The tenant failed to pay the March 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, the tenant's application with respect to cancellation of the 10 Day Notice provides no evidence to contradict the landlords' claim that the tenant has failed to pay rent. If the tenant has claims regarding the landlords' compliance with the *Act* or the satisfactory nature of the rental unit, he has the right to bring those claims forward for dispute resolution. He is not entitled to withhold rent.

The remedy for failure to provide a material service is an application to the Residential Tenancy Branch to apply to require action or compensation from the landlord. In this case, the tenant has withheld rent as a means of attempting to motivate the landlord and to reimburse him for the difficulties with this tenancy. However, section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a

portion of the rent.” A tenant has a right to deduct all or a portion of the rent under this *Act* only if ordered to do so by an arbitrator. There is no such order allowing the tenant to deduct any or all of his rent.

In accordance with section 46(5) of the *Act*, the tenant has not paid rent within 5 days of receiving the 10 Day Notice or successfully disputed that notice. I dismiss the tenant’s application to cancel the notice to end tenancy and find the 10 Day Notice valid. The tenancy is ended and the tenant must vacate the premises after service of this Order by the landlord. Based on the undisputed evidence that the tenant has failed to pay rent and that the tenant is unable to withhold rent as a result of other tenancy issues pursuant to section 26 of the *Act*, I find that the landlord is entitled to a 2 day Order of Possession.

The tenant also applied for a rent reduction based on the landlord’s failure to complete repairs, provide services or facilities as required by law or the tenancy agreement. The landlord did not dispute that the rental unit was impacted by electrical issues and that there was an inspection finding that the residence was not in compliance with city bylaws. The landlords were not forthcoming at this hearing about the nature of the electrical issues in the residence. Landlord RP attempted, in testimony, to minimize the nature of the non-compliance and therefore minimize the serious safety risk to their tenants. The tenant provided evidence that the residence was not wired in accordance with city bylaws and that he made several attempts to contact the landlord to make repairs. However, over the course of the tenancy, the landlords made no repairs. According to the testimony of the tenant, only once did the landlords attempt to access the unit indicating they would be making repairs. Landlord RP initially disputed the tenant’s testimony. Over the course of the hearing, Landlord RP testified that it was too difficult to get in contact with the tenant to make repairs.

Section 32 of the *Act* describes the landlord and the tenant obligations to repair and maintain the premises that are the subject of a residential tenancy.

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. ...

The tenant’s undisputed sworn testimony was that the rental unit and the rental unit below him flooded as a result of plumbing problems on more than two occasions. He

testified that the plumbing issues were ongoing and that he attempted to contact the landlords on several occasions, eventually having the problem addressed by hiring a plumber at his own cost.

Section 65(1)(c) and 65(1)(f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” Section 65 of the *Act* reads in part as follows:

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders: ...

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director; ...

(d) that any money owing by a tenant or a landlord to the other must be paid; ...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement; ...

I find that the tenant and his family were subjected to grow operation equipment/chemicals in their home as well as other inconveniences related to the previous grow operation. The tenant testified that he would not likely have rented the residential premises if he had known the background of the property given the risks associated with homes that have housed grow operations.

Plumbing and electrical are integral to the safety and repair of a residence. Maintaining the safety of the residence is an obligation of the landlord, I find the landlord did not meet her obligation to maintain the safety of the residence. I find the landlord is responsible for any lack of plumbing and electrical services and facilities over the course of this tenancy.

Whether the electrical inadequacies were as a result of a previous tenant undertaking illegal activities or whether the landlord had failed to maintain the proper levels of compliance with the city standards, the landlord is ultimately responsible for the condition and safety of the rental premises. Whether the landlord was merely negligent in not maintaining a sufficient standard in the condition of the electrical or whether the landlord was actively avoiding the cost of repairs, the landlord is still responsible for the

maintenance of their rental premises, particularly with regards to fundamental safety matters.

I find that, over the course of the tenancy, the tenant was subject to nineteen months with unsafe electrical wiring; I find that the lack of assurance of safety in that electrical should result in a reduction in rent by 5%, resulting in a \$55.00 per month rental reduction. I find that, over the course of the tenancy, the tenant was also subject to inconvenience as the landlord failed to meet his requests to have his plumbing investigated and repaired. As with electrical matters, the landlord is ultimately responsible for fundamental services to the rental premises, like plumbing. I find that the inconvenience of leaks and more than two floods in that area as well as an uncertainty about the plumbing on an ongoing basis should result in a reduction in rent by 5%, resulting in a \$55.00 rent reduction for the twelve months that the plumbing was described by the tenant as non-functional.

I find that the issue of the high utilities as a result of other occupants/tenants were addressed by the landlords as soon as they became aware of the issue and that they were neither negligent nor responsible for the temporarily high utility bill. I find the tenants are not entitled to recover with respect to the utilities. Given that I have found this tenancy to have ended, I find the tenant is entitled to a total monetary amount as follows,

Item	Amount
Rent reduction – Electrical – 19 months @ \$55	\$1045.00
Rent reduction – Plumbing – 12 months @ \$55	660.00
Total Monetary Amount Owning to the Tenant as a Result of Loss in Value of Tenancy	\$1705.00

The landlord sought a monetary award in the amount of \$2200.00 for two months of unpaid rent. The tenant does not dispute his failure to pay rent. The evidence has shown that the rental amount is \$1100.00 payable on the first of each month. The tenant testified that, after receiving the 10 Day Notice, he did not pay any of the rent he owed. Pursuant to section 26 of the *Act*, “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” Based on the evidence provided at this hearing, including the tenant’s testimony that he has not paid rent for two months, I find that the landlords are entitled to two months of rent totalling \$2200.00.

The landlord testified that she continues to hold a security deposit of \$550.00 plus any interest from January 1, 2013 to the date of this decision for this tenancy. There is no interest payable over this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72(2)(b).

Item	Amount
Unpaid Rent – March & April 2015 (2200.00)	\$2200.00
Security Deposit Amount already held (550)	-550.00
Total Monetary Amount Owing to the Landlord	\$1650.00

Given that both claims had merit, I find that each party shall be responsible for their own filing fee for their applications.

Conclusion

I dismiss the tenant's application to cancel the notice to end tenancy.

I issue the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I grant the landlord's application for a monetary award with respect to unpaid rent and authorization to retain the tenant's security deposit towards any award.

I grant the tenant's application for a rent reduction. I issue a monetary Order in favour of the tenant as follows;

	Amount
Total Monetary Amount Owing to the Landlord <i>Unpaid Rent – March & April 2015 (2200.00)</i> <i>Minus Security Deposit Amount already held (550)</i>	\$1650.00
Total Monetary Amount Owing to the Tenant <i>Rent reduction – Electrical – 19 @ \$55 = 1045.00</i> <i>Rent reduction – Plumbing – 12 @ \$55 = 660.00</i>	-\$1705.00
Total Monetary Award to the Tenant	\$55.00

The tenant is provided with a formal Order in the above terms. Should the landlord(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

I dismiss the application of both the tenant and the landlord to recover their filing fees for these applications.

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: April 30, 2015

Residential Tenancy Branch

