



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEADER VICTORY INVESTMENT CO. LTD. & HENRY LEUNG
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement and to make repairs to the unit, site or property.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on June 3, 2015. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

There was a previous hearing held for this tenancy on May 28, 2015. This hearing was to deal with an application from the landlord for unpaid rent and to end the tenancy. The Landlord was awarded an Order of Possession and a monetary order for \$1,268.00 in unpaid rent. The Landlord said he has not served these Orders on the Tenant as he thought he had to wait until this hearing was completed.

For the hearing the Tenant spoke through an accredited translator (ID # CIBC # 03-03-2525) as English is not the Tenant's first language.

Issues(s) to be Decided

1. Are there losses or damages under the Act, regulations or tenancy agreement to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Are there repairs to be done to the rental unit?

Background and Evidence

This tenancy started on April 1, 2009 the terms were not available for the hearing but the tenancy is now on a month to month basis. Rent is \$649.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$310.00 on April 15, 2009.

The Tenant said on March 15, 2015 the ceiling in the rental unit bathroom fell down as a result of a water leak. As well the Tenant said his kitchen sink was leaking, the bathroom fan was

broken and making a great deal of noise and there is a constant noise in the building and his rental unit that made the rental unit uninhabitable. The Tenant continued to say that he contacted the Landlord to repair the damaged items and he did not get a return call from the Landlord until May, 2015. The Tenant said the conditions he was living in were intolerable. As well the Tenant said there was an inspection of his rental unit in January, 2015 so the Landlord was aware of some of the problems in his rental unit. The Tenant said that because he was living in such poor conditions and the Landlord did not make any attempts to repair the rental unit until May, 2015 he has made this application for \$25,000.00 in compensation. The Tenant said his life is worth much more but he was told this is the maximum amount that can be claimed under the Residential Tenancy Act. The Tenant requested \$25,000.00 for the terrible living conditions in the rental unit which the Landlord knew about but did not repair.

The Landlord said new owners took over the rental complex May 15, 2015 and they have tried to respond to the Tenant's issues as best as they could. The Landlord said the leak and bathroom was repaired on May 29, 2015. As well the bathroom fan and the second floor fan were replaced to reduce any noise issues in the building and the Tenant's rental unit. The Landlord said they have dealt with all the Tenant's complaints by July 1, 2015 and the Landlord does not believe the Tenant has a valid claim against the Landlord as they have done the repair work.

The Tenant agreed most of the repairs have been completed but the noise in the building and his rental unit is still too loud to live in.

The Landlord said the replacement of the fans reduced the noise in the building and in the Tenant's unit to a normal amount of noise for a building built in the 1980.

The Tenant said his unit is still too noisy to live in comfortably.

The Landlord said the Tenant should move out if he does not like the rental unit and the Landlord said he will be serving the Tenant the Order of Possession to end the tenancy shortly after this hearing.

The Tenant said he only withheld the rent payment because of the repair work that was not done. The Tenant said he is willing to make the rent payments if the repairs are completed including the noise issue in his room. The Tenant said the bathroom, kitchen and fan repairs were completed in May and June 2015, but the noise issue is still in the building.

The Landlord said the Tenant still has not paid the rent and so the tenancy will end.

The Parties were given the opportunity to settle this dispute with their own solution but the Tenant declined the opportunity.

The Landlord said in closing that they have been responsible landlords since taking over the building and they do not believe the Tenant has a valid claim against them because they have resolved the repairs issues in a timely manner. As well the Landlord asked if the decision could bar the Tenant from making any other claims against the Landlord in the future.

The Tenant said in closing there is still noise in the building and his life has been unbearable for the last 6 months because of all the repair issues in his rental unit. The Tenant said he can pay the rent and he will pay it but he wants the noise issue fixed so that the rental unit is habitable.

The Tenant said he is requesting \$25,000.00 for his pain and suffering over the last 6 months. The Tenant said he submitted two CDs as evidence of the repairs required and the noise in his rental unit. The Landlord said he does not dispute the issues the Tenant has brought up, but the Landlord said the issues are repaired now.

Analysis

Section 32 of the Act says(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 Landlord said they took over the rental complex on May 15, 2015 and the Tenant's issues originated in March, 2015. The Landlord said they have acted responsibly and they have dealt with the Tenant's issues therefore the Landlord believes the Tenant's claims have been satisfied. A new Landlord has the obligation to deal with the responsibilities and liabilities resulting from the tenancies in a rental complex from the previous landlord/owner. As such I find the Landlord is responsible for repairs and maintenance of the rental complex and any claims that result from those repair issues. As well the Landlord may have a legal remedy through other processes against the previous landlord for claims that result from the old landlord's actions or inactions. I accept the Tenant's testimony and video evidence that the rental unit was in poor condition and in need of repairs. I also accept the testimony of both the Tenant and the Landlord that the bathroom, kitchen and fan repairs have been completed. With respect to the noise issue neither party provided evidence that the noise issue is still a concern or not after the other repairs were completed. The Tenant said the noise issue is still causing the unit to be uninhabitable. The Landlord said they have resolved the noise issue to a normal noise level for an older building. I find it unclear if the noise issue has been resolved due to a lack of evidence. It is the responsibility of the Applicant to prove a claim and when it is just the applicant's word against the respondent's word the burden of proof is not met. I find the noise issue is dismissed for lack of evidence.

Further I find the Landlord is responsible for the time period between March 15, 2015 and May 28, 2015 when the Tenant's rental unit was in a state of disrepair. The condition of the unit as shown by the video evidence the Tenant submitted confirms the rental unit was close to uninhabitable. Therefore I award the Tenant an amount equal to the rent for ½ March, April and May, 2015 at \$317.00 for March and \$634.00 for the months of April and May, 2015 in the amount of \$1,585.00. Further as the previous landlord knew about the issues and did nothing to mitigate the problems; I find the Tenant has established grounds for compensation for pain and suffering in the amount of \$300.00 for each of the three months ½ March, April and May, 2015 in the amount of \$750.00. Pain and suffering compensation is a difficult thing to calculate but based on the video evidence I find the Tenant needs to be compensated to some degree. The previous landlord knew about the issues and did nothing but the Tenant did have use of the rental unit so the unit was not uninhabitable. As well the Tenant has not submitted any other

evidence to support his claim of pain and suffering as in health effects supported by a doctor's letter or costs that the Tenant incurred as a result of the repair issues in the rental unit.

With respect to the Tenant's application for the Landlord to complete repairs on the unit I find the Landlord has an Order of Possession from a previous arbitration which the Landlord said he is going to serve on the Tenant to end the tenancy; therefore as the tenancy is ending I dismiss the Tenant's request for repairs to the rental unit.

As the Tenant has only been partially successful in this matter, I order the Tenant to bear the cost of the filing fee for this application of \$100.00 which the Tenant has already paid. Tenant will receive a monetary order for the balance owing as following:

Rent compensation:	\$ 1,585.00	
Pain and suffering	\$ 750.00	
Subtotal:		\$2,335.00
Balance Owing		\$2,335.00

Conclusion

A Monetary Order in the amount of \$2,335.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: July 21, 2015

Residential Tenancy Branch

