Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP RR FF

Preliminary Issues

The Tenants filed their application for dispute resolution on June 24, 2015, seeking monetary compensation for $1,150.00 and various orders against the Landlords. In the Tenant's July 15, 2015, evidence submission they included a Monetary Order Worksheet indicating they were seeking an increased amount of compensation of $2,300.00.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added by bold text].

In this case the Tenants did not file or serve an amended application and simply listed the additional claim on a monetary order worksheet that was submitted in their late evidence. Accordingly, I declined to hear matters which involved an amount not claimed on the original application. The remainder of the Tenant's monetary claim was dismissed, with leave to reapply if not directly related to the issues heard in this proceeding.

The Tenants testified that they vacated the property as of July 25, 2015 and remain in possession of the rental unit until July 31, 2015 to allow themselves time to finish cleaning. Based on the foregoing, I find the Tenants' requests for orders against the Landlords for emergency repairs, repairs, and future reduced rent are now moot as the Tenants no longer reside in the rental unit and will be returning possession to the Landlord on July 31, 2015. Accordingly, I dismissed the Tenants' requests for repairs, emergency repairs, reduced rent, and orders against the Landlords to comply with the Act, regulation or tenancy agreement, without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on June 24, 2015 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. 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. Each person gave affirmed testimony and confirmed receipt of evidence served by each other.

The Residential Tenancy Branch Rule of Procedure 3.14 (hereinafter referred to as Rule of Procedure) provides that the Applicants' documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.14 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

The Landlords argued that they were not served with copies of the Tenant's second CD consisting of additional electronic photographs or the new Monetary Order Worksheet until July 13, 2015. The Landlords argued that this second evidence submission was late and should not be considered despite the Landlords having an opportunity to review the evidence.

Based on the above, I accept the Landlords' submissions that the Tenants' evidence was late in accordance with the calculation of days set out in the Rules of Procedure. That being said, the majority of the late evidence related to the Tenants' increased claim amount which was dismissed above. Therefore the additional late evidence will not be considered in my decision. I did however, consider the Tenants' digital and documentary evidence that was served and received in accordance with the Rules of Procedure as well as all of their oral submissions.

Rule of Procedure 3.10 stipulates that digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

The Tenants first submitted that they did not receive the Landlords' evidence until July 22, 2015, five days prior to this hearing. After clarification from the Landlords the Tenants acknowledged that it was possible they received the Landlords' evidence the week prior on July 14, 2015.

The Landlords' evidence submission consisted of photographs of the rental unit which were taken on June 28, 2015 as well as copies of documents and emails which do not meet the requirements of digital evidence as outlined in Rule of Procedure 3.10 listed above. Accordingly, I considered the Landlords' photographic evidence and all oral submissions. I declined to consider any images of documents or electronic formats of documents contained on the C.D. submitted by the Landlords as they do not meet the requirements of Rule of Procedure 3.10.

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. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was that the Tenants entered into a written month to month tenancy agreement that began on March 15, 2013. Rent of $1,150.00 was due on or before the first of each month and on or around March 11, 2013 the Tenants paid $575.00 as the security deposit. The Tenants vacated the property as of July 25, 2015 and remain in full possession of the unit to finish their cleaning prior to returning possession to the Landlords on or before July 31, 2015.

The Landlords described the rental unit as being like a side by side duplex however there were three separate, self-contained, rental suites located in the building. The Tenants' occupied suite "B" which consisted of two floors located above ground.

The Tenants testified that they are seeking monetary compensation in the amount of $1,150.00 as a result of having to live in the rental unit with a leaky window and during the partial roof repair.

The Tenants submitted that soon after they moved into the rental unit they noticed water leaking from the window in their son's bedroom. They asserted that they had several oral discussions with the Landlords about the leak and that their requests for repairs went unanswered. They argued that they sent an email to the Landlords in November 2013 and again in September 2014 asking for repairs. The Tenants submitted that it was not until November 2014 when the Landlord placed a tarp on the roof.

The Tenants argued that on May 26th or 27th, 2015 they received a telephone call from the Landlords advising them that the roof was going to be repaired. They submitted that they were not given 30 days' notice of the work. The Tenants asserted that ¾ of the roof was repaired and the portion over their rental unit was not repaired prior to when the

work stopped. The work was conducted on two days, May 29 and 30, 2015 and then just stopped.

The Tenants stated that they are seeking compensation equal to their June 2015 rent of $1,150.00 for the delay in getting the repairs completed and for having to leave the rental unit every weekend to avoid the noise from the repairs. The Tenants submitted that it was their neighbouring tenants who were conducting the repairs and each weekend their neighbours would tell them that they would be finishing the repairs to the roof so the Tenants would leave to avoid the construction and noise only to return to see that the work was not being performed.

The Tenant testified that they would leave the rental unit each Saturday and Sunday around 9:30 a.m. and would not return until after 5:00 p.m. to try and avoid the noise and construction. They argued that on Friday May 29, 2015 they were both home as they were not scheduled to work that day. They submitted that they had to leave with their 4 year old son to get away from the noise. They argued that when they returned home one day and closed the door some of the loose materials that had been left on the roof fell down on their deck. They submitted that they lost the use of their deck due to their fear of debris falling from the roof, and that they lost the enjoyment of being in their suite as it was very hot and they could not open their windows due to the dust and debris from the roof repair work.

The Landlords disputed the claims made by the Tenants and argued that they take water damage seriously as it could negatively affect their lively hood. The Landlords argued that they did not have any verbal discussions with the Tenants about repairs to the window or roof repairs and submitted that they only ever received the two emails from the Tenants.

The Landlords submitted that the first time they attended there were no signs of a water leak and everything was dry. Then when they received the second complaint in November 2014 they attended and there was no doubting that a leak was occurring. The Landlord stated that he took action shortly after the second inspection where he put up scaffolding and removed the eaves to try and locate where the water was leaking from. They also installed some shingles over the Tenants' suite area and then placed two industrial strength tarps over the roof until such time as they could get the roof re-shingled or repaired.

The Landlords pointed to their photographic evidence and argued that if the window had been subject to a severe water leak continuously for two years it would show signs of damage. They noted that their photographs were taken on June 25, 2015 and the window displays no sign of damage or mold.

The Landlords disputed the Tenants' submissions that they had to deal with constant debris falling on their deck as the Landlord said they took care to inspect the deck on a daily basis and they even swept the deck shortly after the roofers attached their safety hooks to the roof. The Landlords stated that they never saw any shingles or nails on the

deck and they only saw one piece of material on the deck which they promptly removed. The Landlords pointed to their photographic evidence which shows the Tenant barbequing on his deck which supports the Landlords' submissions that the Tenants were not prevented from using their deck.

The Landlords testified that the work began on May 29, 2015 and continued until May 31, 2015 between the hours of 10:00 a.m. and 6:00 p.m. The Landlords acknowledged that the work was stalled three days after it began due to the roofers' illness, which left ¼ of the roof repair incomplete.

The Landlords submitted that on June 29, 2015 the Tenants served them with a letter advising the Landlords that the Tenants would no longer engage with the Landlords outside of written communication, the Landlords were not to access the Tenants' deck or approach the Tenants' door. The Landlords asserted that they ceased all work on the rental property until these issues could be heard at dispute resolution.

The Tenants argued that the window did not look damaged in the Landlords' photos because they kept wiping up the water to prevent mold growth in their son's bedroom. They re-iterated that they had to deal with loose debris falling off the roof on June 15, 2015 and noted that the other tenants were not complaining about the noise because they were on the roof conducting the repairs.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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 disputed that there was a water leak coming into the rental unit near a bedroom window nor did they dispute that the roof required repair or replacement. In fact Tenants had previously complained to the Landlord of problems with a water leak coming in through the window. As such, I make no findings on the matter of the necessity of the work.

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 units 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.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In absence of documentary evidence to prove the contrary, I accept the Landlords' testimony that the first time they heard about the water leak coming through the bedroom window was when they received the Tenants` email on November 2, 2013 and when he attended the window appeared dry. The undisputed evidence was the Landlord attended the rental unit after receiving the Tenant's September 26, 2014 email about water leakage and placed tarps over the roof to prevent future water leaks inside the rental unit. Roof repairs began on May 29, 2015.

In response to the Tenants' submission that they were not provided 30 days written notice of the proposed work, there is no provision in the Act that stipulates such a provision. The Landlord is however required to give the Tenants at least 24 hours' notice and <u>not more than 30 days'</u> notice of entry to the property pursuant to section 29(1)(b) of the Act.

I find the Tenants submitted insufficient evidence to prove they suffered a loss of quiet enjoyment due to the presence of the tarps on the roof. I make this finding in part as there were no emails or complaint letters submitted that were issued to the Landlords during the period the tarps were attached to the roof. Furthermore, if there were problems with the tarps the Tenants were required to take reasonable actions to resolve their concerns by informing the Landlords within a reasonable amount of time and seek dispute resolution at that time, not 18 months after the tarps were put in place.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

I accept the Landlords' submissions that the roof repair work was performed on May 29, 30 and 31, 2015 between the hours of 10:00 a.m. and 6:00 p.m. leaving the rental unit undisturbed for the evenings and nights. I also accept the Tenants had full use of the entire rental unit, inside and outside areas, prior to the onset of the May 29th, 2015 roof repair.

The Tenants' submission that the work was performed on their non-work days was undisputed. Notwithstanding the Landlords' arguments that the work was performed on the other 2/3 of the house where the Tenants' unit was not located, I accept the Tenants' submissions that they could not stay in the home during the construction period due to the noise caused by the continuous hammering and scraping during the roof repairs.

In addition to the above, I find there to be insufficient evidence that the Tenants were notified that the work would resume every week after May 31, 2015 until they moved out. There was however evidence to suggest they were initially notified that work would resume on June 6, 2015 which was delayed due to the roofer's illness. I accept that the Tenants vacated the property for the day on June 6, 2015 based on that notice. I do not accept that the Tenants were prevented from using their deck or BBQ from May 29, 2015 onward, as the Landlords' photographic evidence clearly shows the Tenant using his BBQ on the deck on approximately June 28, 2015.

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.

I find it undeniable that the Tenants suffered a loss of quiet enjoyment and therefore a subsequent loss in the value of the tenancy for the three days (May 29, 30, 31, 2015) the shingles on the roof were being removed and replaced plus on June 6, 2015 for a period of 8 hours per day. As a result, I find the Tenants are entitled to compensation for

that loss in the amount of **$50.56**. The loss is calculated based on 32 hours (4 days x 8 hours) at $1.58 per hour rent which is determined by $1,150.00 monthly rent x 12 months per year ÷ 365 days ÷ 24 hrs per day

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$10.00**, pursuant to section 72(1) of the Act.

Conclusion

The Tenants have been partially successful with their application and were awarded monetary compensation in the amount of $60.56 ($50.56 + $10.00) which included a partial recovery of their filing fee.

The Tenants have been issued a Monetary Order for **$60.56**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the British Columbia Small Claims Court and enforced as an Order of that Court.

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 28, 2015

Residential Tenancy Branch