



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord appeared. The tenant appeared. The tenant was represented by her advocate. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to cross-examine one another. Neither party elected to call any witnesses. Neither party raised any issue with service.

Preliminary Issue – Scope of Application

Both parties agree that the tenancy was to end 1 July 2015. On this basis, the tenant asked to withdraw her request for repairs to be made to the rental unit. As there is no prejudice to the landlord in allowing the tenant to withdraw this portion of her claim, I allowed it.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to an order that past rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy

agreement? Is the tenant entitled to recover her filing fee for this application from the landlord?

Background and Evidence

There is little dispute in respect of the facts relevant to this application.

This tenancy began 9 December 2014. Monthly rent of \$1,350.00 is payable on the first. The tenant and landlord entered into a written tenancy agreement on 8 December 2014. That agreement set out the following relevant term:

10.1 Landlord's Obligations

- a) the landlord must provide and maintain the residential property in a
The landlord must comply with the health, safety and housing
standards required by law.

The rental unit is contained within an apartment-style building. That building is strata title. The rental unit is underneath another unit, which is occupied and is not controlled by the landlord. The landlord testified that she was instructed that issues regarding strata property were to be directed to the property manager, AK, and not to the strata council.

On 28 March 2015, the tenant discovered a leak in the second bedroom of the rental unit. The leak was quite heavy for the first few minutes and then subsided to a drip that lasted approximately one hour. It is not disputed that the source of the leak is external to the rental unit.

The tenant contacted the landlord on discovering the leak. The landlord contacted the property manager. The landlord attended at the rental unit and took some photographs. The landlord testified that this is the only time she has attended at the rental unit since the leak began. The landlord testified that she told the tenant that the landlord would report the damage to the strata, but did not offer any other assistance.

On 1 April 2015, the property manager and a worker attended at the rental unit. They tried to fix the issue, but were unable to as they could not identify which unit was the source of the leak. The property manager stated at this time that it would take one week.

Approximately two weeks later, a second worker attended at the rental unit. That worker had identified a specific unit as a source. The worker indicated that he had to order a part, which would take two or three weeks to arrive.

In approximately the first week of May, the second worker returned and changed the part.

The water continues intermittently leak when the upstairs occupants use their water. The tenant continued to advise the landlord of the continued water leak. The tenant is aware that the landlord sent emails to the property manager.

As a result of the leak, the second bedroom was unusable. The tenant's son had been sleeping in the tenant's bedroom with the tenant and her spouse. The furniture from the second bedroom has been relocated into the living room.

On 17 May 2015 the parties entered into a mutual agreement to end tenancy. The tenancy ended on 1 July 2015.

The landlord testified that the occupants of the upper unit are uncooperative. The landlord testified that she has spoken with the owner of the unit above and that owner said she would cooperate to fix the leak. The landlord testified that almost all of her contact with AK has been by email. The landlord provided copies of the emails exchanged between the landlord and AK. The landlord testified that the emails are a complete and true copy. The landlord testified that she contacted AK by telephone once and left a message and another time AK telephoned the landlord.

Landlord's Submissions

The landlord submits that the repair of the leak is out of her control: she did not cause the leak and it was unexpected. The landlord submits that she did everything within her control to secure the repairs, but has faced difficulties in achieving the result because of uncooperative upstairs occupants and the strata corporation. \

Tenant's Submissions

The tenant agrees that the leak is not caused by the landlord. The tenant submits that the landlord did not adequately address the situation.

The tenant seeks \$2,025.00 in compensation from the landlord for the landlord's failure to repair the rental unit. The tenant submits that compensation in the amount of 50% for each of the three months of water damage is reasonable in order to compensate the tenant for the diminished value in her tenancy. The tenant seeks \$500.00 in compensation for her unexpected moving costs.

Preliminary Issue – Submissions After Hearing

The tenant was to provide written submissions to the landlord and Residential Tenancy Branch by 10 July 2015. I received submissions from the tenant on 30 June 2015.

The tenant submits that the landlord failed to comply with her duties set out in subsection 32(1) of the Act by failing to initiate repairs and that the tenant's right to quiet enjoyment pursuant to section 28 has been breached. The tenant submits that the landlord has acted negligently.

The landlord was to provide reply submission, if any, to the tenant and Residential Tenancy Branch by 24 July 2015. I was not provided with any submissions from the landlord.

As the timeline for submissions expired 24 July 2015, the proceedings concluded that date. As a result, my time for providing this decision pursuant to paragraph 77(1)(d) of the Act ends 24 August 2015.

Analysis

Section 28 of the Act establishes a right to quiet enjoyment, which includes freedom from unreasonable disturbance. In this case, it is undisputed that the leak caused the tenant to lose the use of the second bedroom resulting in the living room being used as storage and her child sharing the tenant's room. I find, on a balance of probabilities, that disturbance caused by the leak represents an infringement of the tenant's right to quiet enjoyment pursuant to section 28 of the Act.

Subsection 32(1) of the Act requires a landlord to provide and 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 the tenant. I find that the landlord did not provide a rental unit that complied with the standard set out in subsection 32(1). In particular, a consistent leak originating in the ceiling of the rental unit cannot be considered in any way compliant with the landlord's obligation to provide a rental unit that is in a state of decoration and repair that complies with the health, safety and housing standards required by law to make it suitable for occupation by the tenant.

Rent Reduction

The tenant claims for a rent abatement in the amount of 50% of her rent paid for the months of April, May and June. Liability for this amount is governed by paragraph 65(1)(f) of the Act.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. In this case, I find that as a result of breach of the tenant's right to quiet enjoyment pursuant to section 28 and the breach of the landlord's obligation to provide a rental unit that complies with subsection 32(1) of the Act the value of the tenancy agreement was reduced. For the purposes of paragraph 65(1)(f) of the Act, it does not matter whether or not the landlord was at fault. Rather, the focus is on whether the rental unit provided under the tenancy agreement was substantially the agreement that the landlord agreed to provide. In this case, the leak in the second bedroom caused a material devaluation in the tenancy agreement.

Residential Tenancy Policy Guideline, "*6. Right to Quiet Enjoyment*" provides me with guidance in determining the amount of the reduction in value. The Policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted. In this case, the nature of the situation was serious. The water leak was a persistent issue. The nature of the situation meant that the second bedroom was unusable. The second bedroom by its nature is less integral to a rental unit than, for example, a washroom. As such, this militates in favour of a finding of reduced seriousness. However, as a result of the leak the tenant's belongings had to be stored in the living room resulting in diminished functionality of that area. I do not accept the tenant's submission that the value of the rental unit was reduced by half as it does not address the reduced importance of the areas impacted.

In this situation, the assessment of damages is not a precise science; it is not even a calculation. With consideration of the objective value of the areas impacted, the nature of water damage, and the duration of the loss, I value the diminishment of the tenancy as 25%. I find that the tenancy was devalued over the period 1 April 2015 to 30 June 2015. The tenant is entitled to a past rent abatement in the amount of \$337.50 for each of the three affected months. I consider this amount reasonable given the impact that the leak had on the tenant.

Moving Costs

The tenant seeks compensation for her moving costs. Liability for this amount is determined pursuant to section 67.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The British Columbia Supreme Court in *Parhar Investments & Consulting Ltd v Brontman*, 2015 BCSC 637 confirmed that in order to be compensable pursuant to section 67 a loss must be caused by the party from whom compensation is sought.

The tenant submits that the landlord failed to comply with the Act by failing to complete repairs to the rental unit to return the unit to compliance with subsection 32(1) and section 28 of the Act.

The rental unit is strata held. Residential Tenancy Policy Guideline, "21. Repair Orders Respecting Strata Properties" (Guideline 21) provides assistance in considering orders with respect to strata held rental units:

An owner has no power to do work on the common areas of the development, save and except for areas of exclusive use common property or limited common property as required by the by-laws. The dividing line between the strata lot and the common areas is usually the mid point of the exterior walls of the strata lot. Any repairs such as the repair of water leaks originating in the common areas is the responsibility of the strata corporation.

I disagree with the tenant's submission. The landlord could not carry out any repair to the common areas, which includes the source of the leak. The landlord acted diligently to try to secure the repairs but was thwarted because of the actions or inaction of the strata and upstairs occupant. Accordingly, the landlord is not liable for compensation for losses caused as a result of the breach of subsection 32(1) or section 28 of the Act as she did not cause the breach.

The tenant's claim for her moving costs is dismissed without leave to reapply.

Filing Fee

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,062.50 under the following terms:

Item	Amount
April Rent Abatement	\$337.50
May Rent Abatement	337.50
June Rent Abatement	337.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,062.50

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: July 30, 2015

Residential Tenancy Branch

