



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, OLC, RR, MNDC, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order requiring the landlord to make repairs and emergency repairs to the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matters-After discussing with the tenant about the nature of the emergency repairs, I determined that there were no repair requests of an emergency nature as contemplated and set out in section 33 of the Act. I therefore amended his application and excluded his request for emergency repairs.

The tenant submitted further that the tenancy is ending by September 30, 2015, as he has given notice to the landlord, and I therefore have amended his application excluding his request for a reduction in monthly rent, as this matter pertains to an ongoing tenancy.

Procedural matter-

The tenant was advised that the portion of his application dealing with his monetary claim of \$5000.00 was being refused, pursuant to section 59 (5)(a) of the Act, because the tenant did not provide sufficient particulars of his claim for compensation, as is required by section 59(2)(b) of the Act and 2.5 of the Rules. The tenant provided a breakdown of his claim only in documentary evidence, which was submitted nearly a month after his application.

The tenant is at liberty to reapply for his monetary claim.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit and to comply with the Act and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on February 1, 2014, monthly rent is \$795.00, and that the tenant paid a security deposit of \$397.50.

The rental unit is located in an apartment building, and the landlord here is the property manager for the complex.

In support of his application, the tenant submitted that on July 17, 2015, he began noticing dust collecting in his rental unit. After contacting the on-site building manager, he was informed that the landlord had been cutting pipes in the rental unit next door to his, as he was informed the rental unit next door was being converted for another use.

The tenant submitted further that as the dust was from a lead pipe cutting, his rental unit is now covered in dangerous lead dust, and despite his requests to the landlord to clean the rental unit of the dust, the landlord refused to have his rental unit cleaned.

The tenant submitted further that he has cleaned only the items he uses, but the other items in rental unit are still covered in lead dust, which is hazardous to his health.

The tenant submitted that the lead pipe cutting continued next door and that approximately 1 month after the dust began accumulating in his rental unit, he discovered the entry or access point for the dust was a trap door underneath his kitchen sink.

The tenant described the texture of the dust was similar to steel wool and that he was given no notice of the construction next to his rental unit.

The tenant confirmed that he had not notified the landlord or the building manager of the entry point for the dust, or the trap door under his sink; however, the trap door has now been closed off.

The tenant's relevant documentary evidence included digital evidence with pictures showing the dust, a quality assurance report from a lead test performed by a company, showing the amount of lead in the dust, and email communication between the parties.

Landlord's response-

The landlord submitted that the tenant's disclosure as to the entry point for the dust was new information to him and that had the tenant disclosed earlier that the dust was coming through the trap door, the landlord would have made the repairs.

The landlord submitted that he has had 30 years' experience in dealing with the infrastructure of buildings and submitted that the type dust described by the tenant appeared to be concrete dust. The landlord submitted further that the landlord did cut the concrete slab underneath the adjoining bathroom in that renovation out of necessity, as the plumbing was buried in the concrete.

The landlord submitted further that dust from lead pipes is too heavy to travel as described by the tenant and that the amount of lead found after the tenant had the dust tested was 2.2ug, as noted on the quality assurance test, was not harmful as WorkSafeBC standards indicate levels up to 50ug are unsafe. The landlord submitted a printout from WorkSafeBC.

The landlord submitted further that the relationship and communication between the parties has been difficult for at least a year, which caused the landlord to offer the tenant to pay for a clean-up of the dust in his rental unit, to better conform to the tenant's standards for cleaning. The landlord submitted further that he believed a fair offer for cleaning is \$100.00, which would be 4 hours of a professional clean for a 659 square foot apartment. The landlord submitted that the tenant has not accepted the offer, despite being offered that amount in mid-July, after being notified of the dust.

Analysis

Section 32 of the *Act* states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

After considering the parties' relevant evidence in the case before me, I accept that construction or renovation in the adjoining rental unit by the landlord caused dust to enter the tenant's rental unit through the trap door under the tenant's kitchen sink.

As to the matter of repairs requested by the tenant, as the tenant disclosed that the trap door under his kitchen sink has now been closed off, I do not order the landlord to make that repair.

As to the matter of the dust in the tenant's rental unit, as I have found that construction or renovation by the landlord caused dust to enter the tenant's rental unit, I order the landlord to have the rental unit and the tenant's personal property cleaned only of the construction dust and to arrange for the cleaning immediately upon receipt of this Decision.

As the tenant has had partial success with his application, I award the tenant partial recovery of his filing fee in the amount of \$25.00, pursuant to section 72(1) of the Act. I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$25.00, which is enclosed with the tenant's Decision. The monetary order must be served on the landlord to be enforceable and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

Conclusion

The tenant's application seeking repairs to the tenant's rental unit and for the landlord to comply with the Act has been granted in part.

The part of the tenant's application seeking monetary compensation was declined.

The part of the tenant's application seeking emergency repairs and a reduction in rent was excluded from consideration.

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: September 14, 2015

Residential Tenancy Branch

