



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding #0955802 BC LTD,
COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF

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 requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The tenant attended the hearing. The tenant was represented by his agent. The landlords were represented by four different agents. The parties in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant elected to call one witness JW.

No issues of service were raised.

Prior Application

On 18 June 2015, I was assigned to hear an application by the landlord in respect of this tenancy. The tenant did not appear for that application and an order of possession was issued in the landlord's favour.

The tenant vacated the rental unit on or about 1 August 2015. As the tenancy has ended, several issues are now moot. In particular the tenant's application for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

As these issues are moot, I decline to consider them.

Issue

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in May 2014. The tenancy ended 1 August 2015 when the tenant vacated the rental unit. Monthly rent of \$590.00 is due on the first. I was not provided with a written tenancy agreement by either party. The rental unit is a single room with a sink. The tenant has access to shared shower and toilet facilities on the floor.

The tenant testified that there has been no hot water in the rental unit since the beginning of his tenancy. The tenant testified that the only hot water in his rental unit is that water he boils himself. The tenant testified that as a result of the lack of hot water it is difficult for him to wash dishes or carry out personal grooming activities within the rental unit. The tenant testified that he has to use a shared sink in the bathroom on his floor.

DZ testified that the issue with the hot water was first identified in 2014. DZ testified that the tenant notified the landlords verbally of the deficiency in the hot water in November and December. DZ testified that he sent four emails in respect of the hot water deficiency:

- 13 January 2015;
- 4 February 2015;
- 2 March 2015; and
- 17 March 2015.

DZ testified that JW performed work on the hot water issue. DZ testified that JW was unable to resolve the problem. DZ testified that JW attempted to perform repairs but was unsuccessful.

The witness JW testified that the third floor is at the end of the plumbing line. The witness JW testified that the hot water line is blocked with sediment and rust that has collected in the pipes. JW testified that he was made aware of the issue with the tenant's hot water at some point after the tenant moved in, but that he does not know the exact date. JW testified that there was a "stop work order" in October because the plumbing company that had been hired to assist had failed to obtain the required permits.

The agent KD submits that the witness JW is not a reliable witness. The agent KD testified that JW lived illegally in the basement of the residential property. The agent KD testified that the City of Vancouver ordered JW removed as it was not a proper dwelling. KD testified that JW vacated the basement on 30 March 2015. The agent KD submits that JW is not happy with the landlord. The agent KD testified that JW is not a licensed plumber and that it is not "fair" to call JD to testify.

DZ testified that on 17 March 2015 he sent an email to BP, a property use inspector with the city. DZ testified that on 4 May 2015 he telephoned and sent an email to the city as the hot water to the entire building was deficient. This deficiency began on 10 April 2015 and was not resolved until 25 May 2015. The tenant has not set out a separate claim in this application for this outage; however, he has advanced this claim as part of another application that is yet to be heard.

The tenant testified that when he moved into the rental unit there was a hole in the window that was approximately 45 centimeters in diameter. The tenant testified that he believes the previous resident broke the window, but that he has no knowledge of what caused the window to break. The tenant testified that he reported the issue 1.5 days after he took possession of the rental unit. The tenant testified that at this time JW was providing maintenance services. In late December or early January, JW, as an agent of the landlord arranged to put plywood over the hole. The tenant testified that he is not sure of the exact date. The tenant testified that as a result of the hole in the window

rain, wind and birds would enter the rental unit. The tenant testified that his rental unit was very cold. The window was fully repaired in March 2015.

The agent KD testified that the tenant installed a padlock on the door and that as a result the landlords could not access the rental unit. The agent KD testified that the landlord attempted to gain access to the rental unit several times, but could not. The agent KD testified that the landlords tried to access the rental unit with their plumber, but were not able to gain access. The agent KD testified that the landlords attempted access between 13 and 17 July 2015 and on 21 July 2015. The agent KD testified that the landlords attended and could not access the rental unit on 3 August 2015. The agent KD testified that the landlords gained access to the rental unit after they removed the padlock after determining that the rental unit was abandoned.

The agent SM testified that the landlords attempted three or four times in the fall of last year to access the rental unit for the purpose of fixing hot water and pest issues.

The tenant's agent denies that the landlord attempted to fix the rental unit (except for 25 August 2015). The tenant denies refusing entry to his room. The tenant states that he placed the pad lock on the door as his room had been broken into. The tenant testified that he did not deny access to his room on 21 July 2015 and that the plumbers attended and said that they would come the next day, but did not return. The tenant testified that one time when ER came to do repairs he asked her to "hold on" as he was not dressed appropriately to answer the door. The tenant testified that he was short with ER when she opened the door as he was frustrated that she would not wait for him to get dressed.

The agent KD testified that when the landlords gained access to the rental unit, they found that the sink was inoperable as there were needles in the drain. The agent KD submits that this is part of a larger scheme of sabotage. The agent KD testified that the landlords are working to resolve the outstanding issues in the residential property.

I was provided with a letter from the City of Vancouver to the numbered company landlord. That letter attaches a list of deficiencies noted in an inspection that occurred on 25 November 2013. Included in that deficiency list is the issue of no water in the rental unit sink.

I was provided with a request for repairs dated 9 January 2015. The request reiterates the tenant's complaint of no window and lack of hot water.

DZ explained that he initially gathered the video and photographic evidence in September 2014. DZ explained that the landlords appeared to be gaining some momentum in the repairs and this is why there was a delay in filing this application. I have reviewed the video evidence. There is no running water when the hot water tap is opened.

The tenant seeks \$100.00 per month in compensation for each month both the window and the hot water deficiencies existed. The tenant seeks compensation of \$75.00 per month in compensation for each month the hot water deficiency alone persisted.

The tenant claims for \$1,525.00:

Item	Amount
Window (\$25.00 x 10 months)	\$250.00
Hot Water (\$75.00 x 17 months)	1,275.00
Total Monetary Order Sought	\$1,525.00

Analysis

Subsection 32(1) 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 the tenant.

The tenant's video evidence and testimony clearly indicates that there were deficiencies with the rental unit. In particular, the hot water to the tenant's sink was not functional and the window was broken. I find that the rental unit with these deficiencies did not meet the landlord's obligation 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 the tenant. In failing to meet this requirement, the landlords breached subsection 32(1) of the Act.

I give no weight to the landlords' argument that needles in the drain were the cause of the hot water issue. There is no logical connection between needles in a drain and a tap not working. Further, the landlord has not provided sufficient evidence to show that the tenant caused or contributed to the existence of these deficiencies. The landlord's agents attempted to impugn the character of both the tenant's agent and JW. I am unclear to what end the landlord advanced this evidence. It is clear from the photographic evidence that the issues existed. JW and DZ's testimony is corroborated

by this evidence and their character is irrelevant for the purpose of this factual determination.

Paragraph 65(1)(f) of the Act allows me to issue an order the reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. The amount of the compensation awarded pursuant to paragraph 65(1)(f) of the Act is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Preventing access to the rental unit involves more than just actively denying entry when at the rental unit. In this case, the tenant effectively denied access to his room by placing the padlock on his door as the landlord could not enter the room except when the tenant provided access. In doing so the tenant frustrated the attempts by the landlord to remedy the plumbing problems of which he complained. In doing so, the tenant failed to mitigate his damages. However, I am not satisfied that the landlords extended sufficient effort to coordinate mutually agreed to times for entry with the tenant. On this basis, I find that the tenant is only entitled to minimal damages in the amount of \$5.00 per month for the duration of the service restriction, that is, seventeen months.

While the landlords provided evidence that they were thwarted from entering the rental unit with the plumbers, the landlords did not provide similar evidence with respect to the window repair. By some means they were able to carry out the repair at some point in May 2015. As such, the tenant does not have the same mitigation issue with the window that he did with the hot water. The tenant has claimed \$25.00 for each month that the window was not repaired; however, there is a substantial difference between an unrepaired window that is a hole in the wall and an under-repaired window that has been boarded up. I find that the tenant is entitled to the full amount claimed for each month the window was unrepaired, that is, \$25.00 per month over seven months. I find that the tenant is entitled to a reduced amount of \$15.00 per month over the three months that the window was under-repaired.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$305.00 under the following terms:

Item	Amount
Window When Uncovered (\$25.00 x 7 months)	\$175.00

Window When Covered (\$15.00 x 3 months)	45.00
Hot Water (\$5.00 x 17 months)	85.00
Total Monetary Order	\$305.00

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: October 16, 2015

Residential Tenancy Branch

