Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kitslano Management Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction
This hearing dealt with an application by the tenant for compensation for losses experienced as a result of water damage to the rental unit; a repair order; and an order compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and gave affirmed testimony. Written evidence was submitted by both parties. Each acknowledged receipt of the other's evidence, which was considered in the preparation of this decision. The hearing started on September 8, 2015 but the parties were not able to complete their testimony in that time so it was concluded on October 6, 2015.

At the end of the hearing the tenant advised that he was no seeking a repair order.

Issue(s) to be Decided
- Should a monetary order be made in favour of the tenant and, if so, in what amount?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence
This tenancy commenced July 14, 2014. The monthly rent of $1150.00 is due on the first day of the month. The rent includes a parking spot and a storage locker.
The rental unit is a 370 square foot studio apartment located in a high rise building in Vancouver. The kitchen area is adjacent to a small storage room, which is about fifteen square feet. The bathroom is across the hallway from the storage room.

The tenant testified that the storage locker is located is a separate tower and is about eight square feet. The tenant says he has never used it and does not even have a key for it; because of it's location he has never attempted to use it and has never asked for the key for it.

According to the tenant's written submission the unit began to develop a strong musty smell in late July and when he observed water damage to the flooring he reported the issue to the property manager on the evening of Friday, July 25, 2014. His e-mail said

there was a musty smell in the apartment, “which has been slowly getting worse the last few days”, and that a small section of the flooring between the bathroom and the kitchen have become deformed. He thought that something had leaked under the floor and asked if someone could look at the situation, “preferably this weekend”.

The property manager advised that he would contact the building manager on Monday morning, which he did.

Tuesday the tenant reported that the issue was worse.

On Wednesday, July 30 at 11:00 pm the tenant wrote the landlord and:

- Reported that an extensive mould issue had been discovered that evening.
- Requested that whoever came to inspect should be prepared to provide documentation of their qualifications to inspect for water damage and/or mould.
- Advised that he had been in touch with his lawyer.
- Advised that if a clear determination was not made by the following day he was going to the City of Vancouver and suggested that if the city ordered remediation it would be very expensive for the landlord.
- Referred to the landlord’s obligations under the *Residential Tenancy Act*.
- Advised that he had complied with his responsibilities as a tenant by calling or e-mailing the landlord six times in the previous five days.

In his oral testimony the tenant said he first noticed mould on July 30 and he stayed in the unit until August 8 or 9. He said he stayed in a hotel for one night and from then then in a friend’s apartment. When I pointed out that this testimony was not consistent with his written claim that claimed compensation because he had to relocate from July 25 to July 31, he agreed that the statement was not consistent with his testimony but he should be given compensation for his exposure to mould during this period.

In his written submission the tenant said the patch of mould in the storage closet was one foot by three feet.

The landlord sent their maintenance person to the unit who discovered a leak in the faucet set under the kitchen sink. The maintenance person turned off the water valve under the sink and stopped the flow of water. In his oral testimony the tenant said the taps only leaked when they were being used.

In a subsequent e-mail to the tenant, the property manager advised that the maintenance man reported that the leak had been stopped and they would be coordinating with the strata council to rectify the situation.

The tenant was unhappy with this response for a variety of reasons including his assertion that the leak was coming from inside the unit and was entirely the owner's responsibility. His view was that "The strata is not liable in any way for the damage caused and you have no claim against it." He concluded his e-mail with threats of actions by the city, the Residential Tenancy Branch, and his lawyer. He stated that the City of Vancouver would be inspecting the unit.

The property manager responds that they will be making an insurance claim.

On Friday, August 1 the tenant wrote the property manager referring again to his lawyer and the Residential Tenancy branch, and setting a deadline of midnight Sunday for something to happen. He sent a second follow-up e-mail with more of the same on Saturday, August 1.

On Monday August 4 the tenant confirmed with the landlord that the kitchen faucet, which appeared to be the source of the leak, had been replaced and the kitchen is again usable. He complains about the landlord's delay in sending an adjuster and makes more threats about action that can be taken through the Residential Tenancy Branch.

In its evidence the landlord reported that the leaking could have been stopped sooner if the tenant had turned off the shut-off valve on the kitchen sink. The tenant responded that he could not find the valve because it was behind the garburator.

The insurance adjuster met with the tenant and their preferred restoration company on Wednesday, August 6.

The restoration company started work on August 14. The City of Vancouver inspected the unit on the same day.

The tenant stopped payment of the August rent.

On August 13 the property manager asked the tenant if the City of Vancouver had inspected the unit and, if so, would the tenant give them a copy of the report.

The tenant responded that the city had inspected and would be sending the landlord a letter outlining the repairs that were required. He advised that the city found that a leak from the sink caused the damage to the floor and mould had developed in the adjoining storage closet. He also advised that the inspector had mentioned a loose toilet and missing caulking in the shower.

The repairs were completed on September 10.

On September 9 the tenant reminded the property manager about the toilet and the caulking and stated that "an independent, trained plumber is needed to come and fix the issue."

The restoration company fixed the toilet, a fact acknowledged in the tenant's e-mail of September 16.

The tenant moved back into the unit after that date and started paying rent as of September 19, 2014. He moved his possessions back into the storage room.

There was nothing further between the parties until the evening of Friday, December 5, 2014 when the tenant wrote the property manager and the insurance company advising that the shower faucet had lost its seal and was flowing constantly. He said that the storage closet had started to become mouldy and attached photographs.

> "While the two may or may not be connected both issues must be addressed immediately – particularly the faucet. I expect that you have a plumber at the unit tomorrow before 5 pm to address the leak.
>
> I have copied the insurance company and contactor, as their repairs may have to be redone. I should note that, to the best of my knowledge, their work scope did not include fixing the leak that caused the issue in the first place and was limited to fixing the damage that it caused."

He concludes with a notice that if the property manager does not respond quickly he will be contacting the City of Vancouver. Interestingly, he does not say when the leaking started.

In his written submission the tenant says the shower began to flow continuously on Monday, December 1. He writes that "I was concerned that this might cause further damage, and proceeded to inspect the unit." He observed mould developing in the closet and on his personal items and "I notified [the property manager] of this damage

later that week." In his oral testimony the tenant said he checked the storage room on December 5.

In the e-mails that follow the property manager asks the insurance company to investigate the matter; the restoration company says the repair of the leak was not in their scope of work; the insurance company asks the restoration company if the new damage was related to the previous incident or with the work they did, and if the incidents are unrelated the property manager will have to file a separate claim.

On Tuesday, December 9 the remediation company attended that unit. Their subsequent report is that:

> "We had our technicians attend this morning to address the damage and perform an inspection. Firstly, our technicians noted that the current damage is primarily occurring in the laundry room. As the previous claim had damage primarily in the bathroom we believe that this is a separate issue caused by a different source. Our technicians installed drying equipment, removed the affected drywall, and removed the affected laminate flooring. Upon inspection of the in wall plumbing we found that the water had followed the drain stack, this leads us to believe that this damage was caused by one of the units above. Lastly, the technicians found that the majority of the materials are now dry (aside from the concrete & laminate flooring).
>
> Based on our findings today, we believe that the damage to the above noted premises is a separate leak that was caused by a flood that would have happened 1 – 2 months ago in one of the units above. Our recommend plan of action is the insured contacting the strata to inquire about a recent flood and ensure it was addressed adequately."

After many e-mails between the various parties on December 15 the landlord asked the tenant for an update on the shower situation. The tenant responded: "The leak has been intermittent and has temporarily stopped, but the tap is very loose and the faucet is not quite secured to the wall." He then e goes on to remind the property manager about the caulking and mentions two new, minor repairs.

In his oral testimony the tenant said the shower leaked for about ten days and then just stopped.

On December 16 the property manager wrote to the strata asking if there have been any leaks above this unit and copied the tenant on the correspondence.

The landlord testified that the strata was very uncooperative with them and would not provide them with any information. Ultimately they looked at the previous two years of strata minutes, which are posted on-line, but did not see any mention of a flood or leak above the rental unit.

On January 21, 2015 the restoration company confirmed that they had completed the emergency repairs and asked for authorization to complete the repairs.

On January 22 the property manager wrote the insurance company. They advise that the strata have told them there is no history of problems in the previous two years. "It is our contention that this laundry area problem is related to the original problem but not discovered and/or dealt with at that time. As we have already paid the deductible for the original work done, we feel this work should be covered in its entirety under the original claim . . .Please consider the above in light of the coincidence of two so similar incidents in such a short period of time given the extensiveness of the first, and no trace of an outside source for the second."

The insurance company responded that::"It is our understanding that the two leaks seem unrelated and hence to be treated as such; separate occurrences/claims."

Also on January 22, the property manager asked the tenant to provide some information including: "Are there any new wet spots?" In his oral testimony the tenant said he responded to this inquiry but a copy of the response was not included in his evidence package. He testified that he said he thought it was unlikely that the water had come from upstairs because there was no sign of water damage on the upper walls. He testified that the storage room was dry then.

The tenant did file a copy of his e-mail to the strata asking if the property manager had made the inquiries of it that he said he had. The same person who had received the December 16th e-mail from the property manger, cc'd to the tenant, replied that they had not heard from the property manager.

In a second e-mail dated February 4 the same person from the strata management company stated that: "The second time you've called to inspect your suite I observed that the drywall was cut in the storage room towards the floor exposing the pipes inside the wall. There was no evidence of an active leak at that time nor any moisture to be observed on the exposed concrete, insulation material, drywall or ceiling. All was dry and I took photos to document my inspection."

On February 4, 2015 the tenant wrote the City of Vancouver inspector who had attended at the unit in August: "I was hoping you could by to examine the issue, and provide [the property manager] with another repair order. I have their corporate address, so it should be easier to locate them this time."

According to the tenant the inspector came to the unit on April 8 and made a repair order.

On May 6 the tenant wrote the insurance company stating that the insurance claim "is soon to be part of an investigation by the Residential Tenancy branch" and he needed some details clarified.

On June 30, 2015 the tenant filed this application for dispute resolution.

In July the landlord replaced the drywall and repaired the walls in the storage room.

Over the summer, there was an increasingly testy exchange between the property management staff and the tenant.

In his e-mail of August 6, 2015, the tenant set out his position as follows:

> "Under the BC Tenancy Act, I am not permitted to deliberately act in a way that leads to unnecessary damage or losses. This closet has repeated leaked and damaged my personal property, and since the last leak, the cause has not been clearly identified and no action has been taken to address it or future leaks. If I place my personal items in the storage room, knowing that there is a recurrent and unaddressed leak, I would be intentionally exposing my property to undue risk of damage."

In his evidence the tenant included two orders from the City of Vancouver.

The first was dated August 26, 2014. The order notes the following deficiencies:

> "1. There is a dark discolouration and mold along the lower portion of the walls inside the storage closet – finish with new drywall and repair, sand and paint the walls; and
>
> 2. The bathroom toilet is loose and not secured to its base – secure the toilet to the base and seal with caulking."

The second was from the same inspector and is dated August 5, 2015, and states:

> "Further to our letter of April 30, 2015, the Property Use Inspector revealed that the following deficiency still exists: . . .

1. Two (2) sections of the drywall have been removed from the lower walls exposing the steel studs in the storage closet.

Therefore, in accordance with Subsection 23.3 of the Standards of Maintenance By-law, you are ordered to replace the drywall, finish, sand and paint the walls BY SEPTEMBER 8, 2015."

On both documents the inside address has been blacked out so it is impossible to determine to whom the orders were addressed. The tenant says this is how he received the document from the City of Vancouver. Apparently the name and address of the addressee were redacted to comply with privacy legislation.

In its' evidence and written submission the property manager was adamant that the first time they saw any of the orders from the City of Vancouver was when they were served with the tenant's evidence in support of this application.

The property manager said they contacted the inspector on July 14 and a result of a subsequent conversation someone dropped off a copy of the April 30, 2015 order at their office in a plain white envelope. No cover letter was included and the person did not identify themselves.

The April 30 order is addressed to the owners of the strata plan, care of the strata management company, not the owner of the rental unit or the property manager. The unit owner is listed as cc on the order but because I am looking at a photocopy it is impossible to tell if the unit owner was sent a copy of the order in April or sometime later.

The strata management company responded to the city in a letter dated September 8, 2015 that "This is a matter between the City of Vancouver, the Owner of the Property and Tenant. It does not involve the Strata Corporation as there is not any common area being affected."

The property manager testified that this was the first time the strata management company included them in any correspondence between themselves and the city.

The property manager filed a copy of an e-mail from the inspector to the strata management company dated September 8 which states: "The matter has been positively addressed by [the property manager]."

The tenant says he has not used the storage room since December 9, 2014. He also admitted that there has not been any significant sign of water since that date.

The tenant says he thought that since the maintenance man had checked the unit and the property manager had received correspondence from the restoration company asking for the go-ahead to complete the repairs, the property management company knew that the room was unfinished. He did not communicate with the property manager because they had not responded in a timely manner to the first episode so he decided to work through the city instead.

He testified that one of the main things he kept in the storage room was his books, which are used for work and for personal pleasure. He keeps them in cardboard boxes. The first time there was water damage in the storage room the items damaged by moisture were off the ground so putting them back into the room on shelves did not seem like a good alternative to him.

Based on the fact that the water damage on the second occasion occurred in exactly the same place and in the same manner as on the first occasion he is of the opinion that the two events are related. He argues that it is the same leak that is occurring on an intermittent basis, not two separate leaks. He is concerned that the underlying reason for the two events still exists and he wants someone competent to investigate.

In his oral testimony he said the first water damage was not in front of the kitchen sink but in the hallway and it appeared that the water travelled to that area. He confirmed that the washer and dryer were determined not to be a source of the problem and he did not think the toilet was the source of the water.

The property manager said that at first they did think the two episodes were related and they were concerned that the restoration company may not have a done a proper repair. They argued with the insurance company until March and then dropped it. When they did not hear from the tenant they thought the situation was satisfactory. They did not know the tenant was not using the storage room.

The tenant's photographs show the following:

- No sign of water damage on the drywall above the area that was cut out.
- No sign of water damage on the drywall on the back side of the wall.
- No sign of water damage on the plate at the bottom of the studs.

The tenant did not submit his out-of-pocket expenses to anyone until he filed this application. The landlord is unhappy because if they had been submitted sooner, the insurance company would have paid them as part of the insurance claim. Now that the

claim has been closed, it is the landlord who will bear the cost of any order. The tenant responds that no one told him these costs could be included in the insurance claim or suggested there was a time limit for doing so.

The out-of-pocket expenses claimed by the tenant are as follows:

- Storage unit –On August 19, 2014, he moved everything to his office for a few days and then moved everything into storage on August 28. He rented the smallest storage unit possible and did receive the deposit back. His claim is $148.27.

- Moving Company – The invoice is for moving to the storage unit on August 28 and moving back to the rental unit on September 16 and is in the amount of $559.18.

- Cleaning - The tenant claimed for cleaning in the amount of $113.40. The invoice is dated September 28, 2014. He testified that the invoice date does not represent the day on which the work was actually done. He paid the cleaner in cash and obtained an invoice later. He testified that he thought the work was done at the beginning of September; a date or two after he regained possession.

- Damaged Chattels – The tenant claims the replacement cost of a pair of two year old shorts and a year old, damaged, tennis bag.

Analysis

This is a claim in contract by the tenants against the landlord. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages:*

> "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Section 7(2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

An initial point must be made about the response time to the repairs. Once an insurance claim is filed, the landlord loses all control of the repair/restoration process. It is the insurance company who decides when the adjuster is sent, whether multiple quotations will be obtained from prospective contractors, who is awarded the project, and the scope of the work; and it is the contractor who determines the pace of the work.

Secondly, although the tenant initially sent the landlord many detailed e-mails outlining his research and his entitlements he did not make any inquiry about compensation for his out-of-pocket expenses until a year had passed. The tenant's claims have been made within the time allowed by section 60 but the delay does raise some questions.

I allow the claims for the moving company and the storage unit in the total amount of $ 708.18. The tenant did have to move everything out for the repairs and he did mitigate the cost by finding free storage for part of this time.

I do not allow the claim for cleaning. The invoice says the work was done on September 29, 2014. If the invoice was obtained after the fact for the purpose of this application why not have the cleaning company put the actual date of the work on the invoice? The invoice says the work was done on September 28, almost two weeks after the tenant moved back into the unit. If the cleaning was for post-construction clean-up why was it not done in the period after the work was completed and before the tenant moved back in?

When considering the tenant's claim for a rent reduction I have considered the following factors:

- The storage room represents less than 5% of the total square footage of the rental unit.

- The tenant's evidence as to when he was required to vacate the unit in the summer of 2014 was not consistent.

- The tenant did not report a water problem until December 5 although he noticed the problem on December 1. Accordingly, the period of December 1 to December 5 will not be included in any calculation.

- The tenant did not communicate with the landlord after January. This is particularly mystifying when you look at the volume of correspondence from the tenant on the first episode. I do not accept the tenant's statement that he thought it would be pointless to communicate with the landlord because the landlord had not responded to his earlier complaints. The evidence is that the landlord did respond to his communications but generally waited until a work day to do so. Further, the landlord did ask the tenant about the situation in January.
- On the other hand, the landlord should have been more diligent in its' follow-up. They spent a couple of months trying to get the work included in the insurance claim so they had to know that the room had not been completed.

- The tenant did nothing to mitigate the inconvenience he experienced by keeping his possessions out of the storage room. First of all, he could have applied months sooner to the Residential Tenancy Branch for a repair order. He could have bought some plastic containers and moved his books out of the cardboard boxes and into waterproof boxes. He could have put some of the larger soft items shown in his photographs such as luggage and pillows into plastic bags. He could have used some temporary shelving to put the items off the floor. His own evidence and the photographs show that there was no sign of water on the upper five or six feet of the storage room walls.

- It has now been ten months since the mould was removed from the storage room and there has been no sign of water in that period.

Having considered all of these factors I award the tenant a total of $172.50 for loss of use of the storage room. This represents a 5% reduction for three months. If the tenant had filed this application for dispute resolution at the same time as he contact the City of Vancouver the repair would probably have been completed within a month. By failing to take any action he extended the time for which he was inconvenienced and failed to mitigate his damages.

On any claim for chattels, either damaged or improperly taken, either by a landlord or a tenant, the value that can be awarded is not the replacement value but their actual value in the market as used items. There was no evidence of the items actual value, which given the nature of the items would have been minimal. This claim is dismissed.

In summary, I award the tenant damages for loss of use of the storage room and out-of-pocket expenses in the total amount of $880.68. As the tenant was only partially successful on his claim I award him half of the $100.00 fee he paid to file it. The total amount awarded to the tenant is $930.68.

Conclusion

The tenant is granted a monetary order in the amount of **$930.68** for the reasons set out above. Pursuant to section 72(2) this amount may be deducted from the next rent payment due to the landlord.

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: October 28, 2015

Residential Tenancy Branch