Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 370591 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR ERP RP RR

Introduction:
This was an application by the tenants. Both parties and witnesses were present at the hearing. I find the tenants were served a Notice to End a Residential Tenancy on October 5 by registered mail. The landlord admitted service of the application for dispute resolution dated October 7, 2015 by registered mail. The tenants apply for orders as follows:

a) To cancel a Notice to End the Tenancy for non-payment of rent dated October 5, 2015.
b) To order the landlord to do emergency and other repairs pursuant to sections 32 and 33 of the Act;
c) To obtain a rent rebate for emergency repairs and as compensation for loss due to neglect of the landlord to do repairs;
d) For recovery of the filing fee.

Issues: 1. Is the tenant entitled to any relief?
2. Has the tenant proved on the balance of probabilities that the landlord has failed to do necessary work or repairs and they are entitled to a rent rebate or other compensation for emergency repairs and/or loss suffered due to the landlord's neglect? Are they entitled to an Order that the landlord do repairs?

Background and Evidence:
Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the landlord bought the home in June 2015 and rented it to the tenants on July 2015 on a fixed term lease to expire June 30, 2016. The rent was $3200 and a security deposit of $1600 was paid on July 1, 2015.

It is undisputed that the tenants did not pay rent for October 2015 and a Notice to End Tenancy was served. They have not paid rent since. The landlord said their cheques are returned NSF by the bank. Currently they are $6400 in arrears of rent. The landlord requests an Order of Possession for November 27, 2015 if the tenants are unsuccessful in setting the Notice aside; the tenants suggested this date would be fine.

A great deal of documentary evidence was submitted by both parties and also some photographs and USBs. The evidence mainly addresses the issue of repairs and possible compensation to the tenants. The tenants claim $14,800 in compensation which they specified as:
$1600: refund of security deposit for no condition inspection was done at move-in.
$3200: one month's rent to clean the house for it was very dirty at move-in.
$10,000: for the neglect of the landlord to provide a safe house to them and their children.

The tenant listed the necessary repairs as:

1) Fixing mould problems in the home
2) Railings on deck over garage are wobbly and unsafe for the family
3) Landscaping was unsafe
4) Hydro wires connected to the home did not meet safety standards as they were not at sufficient height over the deck.

There was disagreement over the condition inspection report. The landlord said that he met the female tenant and her father to inspect the house before move-in on June 21, 2015. He said they looked at everything and he noted on the addendum to the lease the repairs that needed to be done. In the addendum in evidence, he noted "To repair fan, door lock, bathroom drain and security smoke alarm". He said the tenant read it, signed it and gave him a cheque for the first month's rent and security deposit and said she would leave the rest of the cheques for the fixed term in the kitchen drawer. The landlord found them there the next day. He said there were no issues noted other than on the signed addendum and the house was certainly not dirty. A certified house inspector with over 14 years experience gave evidence that he inspected the house in June before the purchase and he was satisfied with the condition including the safety of the wire height over the garage. He said he certainly would have noted it if there were safety issues and there was no visible mould inside the house. He noted that the wood in the garage was somewhat rotted so the deck railing over the garage was wobbly.

The landlord called an electrician to witness but he was at a location where he was unable to contact him. He requested that I review the electrician's written submission. The electrician wrote that on October 16, 2015, he went to work at the house. He said the tenant would not allow the landlord to enter but he was able to enter and tighten some screws in the living room fan and inspect the wiring in the garage which was slightly damp. He said the tenants brought nothing else to his attention. He said he again went on October 20, 2015 to do some GFCI plugs around the home and install a new thermostat he had purchased. However, on arrival, the landlord informed him the tenants would not allow them into the home but agreed to pay him for his time. On October 28, 2015, the landlord informed him that he had given the tenants notice of entry through the mail box and by registered mail but he was informed by email from the tenants that morning that they would not permit them to enter to do the work. His invoice for $630 and cheque in payment for his three attempts is in evidence and the emails from the tenant.

The tenant said she did not get a copy of the addendum, and then asked if there are items about garbage and landscaping on it. She then pointed out that the landlord's noted repairs are handwritten, not typed like the other items and in any case, are not in the proper condition inspection report form which is available from the Residential Tenancy Branch. The lawyer pointed out that I have discretion in what might be acceptable according to a recent Supreme Court case. The tenant included in the evidence two condition inspection reports which they had done. They apparently provided them to the landlord on October 1, 2015 but he did not sign them. He said they are wrong and exaggerated for the tenants had decided not to pay rent. In evidence is an email from the tenant telling the landlord not to cash October's cheque.

The tenants said they called and emailed concerning unsafe items in the home over the three month period and when nothing was done, they withheld their rent to pay for repairs. However, they agreed they had done no repairs but had bought some tools. They provided no receipts in evidence. They submitted some information from the internet website of BC Hydro and said the wire over the garage should have been 3.5 metres and it was only 2.5 metres. The landlord said he asked BC Hydro and they said it was fine, the home inspector had no issue with it and neither did his electrician. His lawyer submitted that hydro standards change from time to time and the wires they put in for service to homes are at varying heights according to standards at the time. He said there was no professional evidence of electrical safety issues and no responsibility for a landlord to upgrade to a 2015 code. He said the landlord talked to the City and had two professional opinions and did all that was required to have a safe home.

The tenant said they did not allow an alleged landscaper or electrician in because they did not identify themselves, they did not speak English and there was another stranger standing outside. They felt uneasy. A female witness for the landlord wrote a letter concerning her observations on October 16 and 20, 2015. She noted the tenants were rude, did not allow entry to the landlord who accompanied the electrician, the male tenant shouted at her, told the electrician rudely to remove his shoes and on October 20, 2015, the female tenant came out and held her phone close to the landlord to record the landlord speaking. Then the male tenant came out and took pictures of her car number plate. She said the landlord had scheduled another visit from the electrician on October 28, 2015 and she was to accompany him but he called her and said the tenants sent an email refusing entry. The tenant's email dated October 28, 2015 is in evidence and is addressed to the landlord. It states in part that he refuses to provide any proof of his identity whatsoever and is an unidentified stranger.

The tenant also notes that a fence was broken and was dangerously leaning over since the storms of August 2015. The landlord said this was never mentioned nor was the mould in the garage until October when the tenants were refusing to pay their rent. He said he tried to address each issue in a timely way and he produced a timeline of any complaint and his response. The lawyer pointed out a credibility issue evidenced in emails where the tenant emailed on October 1, 2015 telling the landlord not to cash their rent cheque and then on October 9, 2015 said the landlord was refusing to cash it.

In evidence are many emails, photographs, the tenancy agreement, the Notice to End Tenancy, photographs and USBs.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, I find none of their complaints constitute valid reasons to withhold rent. Section 26 of the Act states that a tenant must pay rent when due whether or not the landlord fulfills his obligations under the Act. Although, in limited circumstances pursuant to section 33 of the Act, a tenant may deduct compensation for emergency repairs, I find this section does not apply in this case. The tenant agreed they had done no emergency repairs and paid for none. I therefore dismiss their application to cancel the Notice to End the Tenancy. I find the tenancy ended on October 20, 2015. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession effective November 27, 2015 as agreed in the hearing. As this is the tenant's Application, I find I have no jurisdiction to give a monetary order to the landlord for rent arrears. The landlord must bring their own application for compensation.

Tenant Orders or Compensation:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I note a recent court decision stated that Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement. The onus of proof on the balance of probabilities is on the tenant to prove that the landlord violated the Act or tenancy agreement and the violation caused the tenant to incur damages or loss as a result. I find there is a conflict in evidence regarding the Condition Inspection Report. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the

claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find the weight of the evidence is the female tenant and her father inspected the home in June, the landlord had a lease with an addendum on which he wrote repairs to be completed and both parties signed the lease. I find the landlord's evidence more credible than the tenant's that he wrote the necessary repairs to be done before the signing. I examined the addendum and the writing and signatures appear to be done with the same pen and ink and this supports the landlord's testimony. I find the tenant's evidence less credible for she first denied she saw the addendum, and then commented on the typewritten sentences regarding landscaping. I find she may have forgotten reading and signing it as she appeared to have forgotten she emailed the landlord to not cash October's rent cheque on October 1, 2015 and then emailed on October 9, 2015 that the landlord was refusing to cash it.

I place no weight on the condition inspection reports that were completed by the tenants and sent to the landlord on October 1, 2015 after they had decided not to pay rent. They were done after the tenants had lived in the home 3 months and do not show the conditions at move-in. I find the addendum to the lease more reliable as it was done after the tenant and her father inspected the home and it was signed by both parties. I also find it more reliable for I find it very unlikely that the tenants would have agreed to lease the home for one year and written post dated cheques if the home was in the condition they describe in their rather self serving reports.

Regarding the tenants' claim for $3200 for cleaning the home, I find they have not met the onus of proof on a balance of probabilities to show that the home was dirty and required such cleaning. I find the evidence of the home inspector and landlord is that it was clean and tidy and the photographs also show this. I find the landlord had just purchased the home and I find it unlikely, as he submitted, that he would have bought a 'filthy' home. I dismiss this portion of their claim.

In respect to the claim for a rent rebate for unsafe housing caused by electrical issues, I note the timeline of the landlord states the tenant told them that the hydro line feeding into the house was too low on July 4, 2015. The landlord informed them that he would have BC Hydro look into it and on July 14, a BC Hydro troubleshooting person visited the premises and noted the height of the wire was 2.5 metres. On July 17, 2015, a BC Hydro design person visited the premises and on July 23, 2015, the landlord had an electrical company visit to discuss other electrical issues. I find the landlord's evidence credible that when he called BC Hydro regarding the visits, their office told him that if there was a safety issue, the wire would have been disconnected immediately due to

liability issues. This evidence was supported by the licensed house inspector. I find also that on July 25, 2015 the landlord visited to fix a drain plug cover and switch cover in the master bedroom but access was denied to these rooms. He fixed some GFICs in the kitchen and no others were brought to his attention. During these visits, the landlord said the tenants were aggressive and difficult to deal with and he was discouraged and they later denied access for repairs. I find this evidence credible as it is well supported by emails in evidence.

I find insufficient evidence that the landlord through act or neglect violated the Act or tenancy agreement by providing unsafe electrical work or wires in the home. Although the tenant provided some internet information from 2011 concerning the required height of the electrical feeder wire, I find insufficient evidence that this particular disputed wire did not conform to standards or codes. I find it improbable that the BC Hydro inspector or Design person who came in July would not have compelled correction if the wire was at unsafe height (as the office informed the landlord). The tenants did not provide any evidence from a professional and the landlord's professional who gave evidence said he was satisfied that it posed no hazards. I find the landlord's timeline with supportive emails in evidence shows he acted promptly to consult professionals and do repairs in all matters brought to his attention. As I find no act or neglect of the landlord violated the Act or tenancy agreement or caused damage to the tenant, I find they are not entitled to compensation. I dismiss this portion of their claim.

In respect to their complaint about mold in the home, I find insufficient evidence of its existence. The home inspector testified that none was noted in June 2015, I find no mention of it in the tenants' email list of complaints on July 9, 2015 and the landlord notes in his evidence that he had no complaints of mold when he entered to repair in July 2015. The first note concerning mold from the tenant appears to be on October 1, 2015 which coincidentally is when they told their landlord not to cash the rent cheque for October. I note the emails dated from September 25, 2015 from the tenant indicate the tenant does not want to allow access to the landlord or repair persons to do the work. I find they refused access to a landscaper on September 25, 2015 and to the electrician and the landlord on a second visit in October 2016. I find the first mention of a fence problem is also in the October 1st email from the tenant. I find the landlord also attempted to make an appointment for a repair person for the fence but had to cancel the appointment for October 22, 2016. He had to resort to sending a notice of entry by registered mail pursuant to section 29 to gain entry to finish electrical work and fencing. Even then, I find the tenants denied entry on October 20 and 28, 2016 to the landlord and electrician to complete work on smoke alarms despite being given the 24 hour notice by registered mail. I find the photographs show the fence in good repair at the commencement of tenancy and no issues with it were noted in the addendum to the

lease. Apparently the August storms caused part of it to lean over. The tenant emailed and also said in the hearing that she was uncomfortable giving entry to strangers who were speaking another language to each other. She identified the landlord as a stranger. I find this reason improbable and illogical as she had met with the landlord on at least two occasions and completed a signed lease with him. She knew that English was the landlord's second language when she rented from him and he might find it easier to communicate with repair persons in his own language. Her evidence indicates she was refusing his legal rights to enter the home to do repairs after she received sufficient legal notice of entry. I find no provision in the Act requiring a landlord to produce a passport or meet other identity demands of the tenant.

Based on the above evidence, I find the weight of the evidence is that the landlord was not negligent in dealing with the tenant's requests for repairs but acted promptly to try to do repairs when notified for landscaping, electrical work and the fencing. However, due to the tenants' actions in denying timely entry, repairs could not be completed as planned. I find items that were not completed were not due to negligence/fault of the landlord so I find the tenants not entitled to compensation pursuant to section 67 of the Act. I dismiss this portion of the tenants' claim.

In respect to the deck rail, I find insufficient evidence from the tenant as to when the landlord was notified of the issue. However, the home inspector in the hearing noted the deck rail was wobbly from the beginning of the tenancy because of the rotten wood underneath and the landlord noted in an email that he had hired someone to fix it in October but the repair person was denied entry at the same time as the landlord and electrician. I find the weight of the evidence is that the landlord knew the deck railing was wobbly and should have known it would be a safety concern to a family with children. As the weight of the evidence is that the tenants' family were unable to enjoy the deck space during the months of July, August, September and October, I find they are entitled to a rent rebate of $100 a month for 3 months when there is no evidence of the landlord's attempt to repair it and $50 for October to the time they refused entry for repair. I find they are entitled to a total rent rebate of $350 for neglect of the landlord to make timely repair to the deck railing. The tenant had claimed $14,800 in total but I dismiss most of the claim for the reasons stated above. I also decline to make any orders to repair as it is irrelevant since the tenancy is now ended.
The tenants requested a refund of their security deposit in the hearing and I advised the parties that they would deal with it pursuant to section 38 of the Act where the landlord is given 15 days from the later of the tenants vacating and providing their forwarding address in writing to either make an Application to claim against it or to refund it to the tenants. I note that in an email dated October 1, 2015 the tenants told the landlord not to cash October's rent cheque but to please apply the security deposit to the rent for the

month of October. I make no findings on this matter of the security deposit but I leave the resolution to a future hearing between the parties

Various allegations concerning harassment were made by both parties. Residential Policy Guideline #6 notes that harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". There are other definitions but all reflect the element of ongoing or repeated activity by the harasser. I find insufficient evidence of actions or speech by either party that are ongoing or repeated. I find the communication between the parties broke down and actions and speech that may or may not have been offensive were categorized that way by the other party. However, I find each action or speech was different, brief and not carried on as repeated vexatious activity, for example when the landlord made little noises to the two year old who was crying. Although this was interpreted negatively by the tenant, I find it just as likely that the landlord was trying to sooth a crying child even though he did not know her. I find the parties both acted rudely at times in their comments but I find this did not reach a level to be defined as harassment. I dismiss this portion of the tenants' claim.

Conclusion:

I dismiss the tenant's application to cancel the Notice to End Tenancy. I grant the landlord an Order for Possession effective November 27, 2015 as agreed by the parties. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

I find the tenants entitled to a rent rebate of $350 for loss of deck use due to the landlord's delay in repairing the railing and to recover only $25 of the filing fee due to their very limited success. I order that the tenant may deduct $375 total from rent owed to the landlord to recover this amount. This will leave a balance of $6025 in rent owed to the landlord to this date.

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: November 19, 2015

Residential Tenancy Branch