



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, ERP, LAT, LRE, MNDC, OLC, PSF, RR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order that the landlord make repairs to the unit, site or property;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order permitting the tenant to change the locks to the rental unit;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and each gave affirmed testimony. The landlord was accompanied by a person who was affirmed to well and truly interpret the proceedings from the English language to the landlord's native language and from the landlord's native language to the English language, to the best of his ability.

The parties also provided evidentiary material in advance of the hearing however the landlord did not provide any evidence to the tenant. The landlord's agent stated that the landlord believed he only need to provide evidence to the Residential Tenancy Branch to respond to the tenant's claim and was not required to provide a copy to the tenant. The landlord's agent requested an adjournment to allow time to provide it to the tenant, which was opposed by the tenant. The Rules of Procedure require that parties exchange any evidence they wish to rely on at a hearing, and that upon a party applying to adjourn proceedings, I must consider the prejudice to the other party. In this case,

the tenant filed the application for dispute resolution on September 14, 2015 and more than 2 months have passed since. If I permit the landlord to serve the evidence upon the tenant, I must provide the tenant with time to review it and perhaps time to provide responsive evidentiary material. Considering that part of the tenant's application is for an order that the landlord make emergency repairs for health or safety reasons, and considering that another application is for an order that the landlord provide services or facilities required by the tenancy agreement or the law, I find that adjourning the hearing would be prejudicial to the tenant, and the landlord's request to adjourn was denied.

The hearing did not conclude on the first date scheduled and was adjourned to a new scheduled date 2 days later. My Interim Decision was provided to the parties after the first scheduled date.

#### Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?
- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that an order should be made permitting the tenant to change the locks to the rental unit?
- Has the tenant established that an order should be made suspending or setting conditions on the landlord's right to enter the rental unit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for a reduction in rent retroactive to the beginning of the tenancy and cleaning and repair services provided by the tenant?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?

#### Background and Evidence

**The tenant** testified that this fixed term tenancy began on July 1, 2015, and expires after 1 year, thereafter continuing on a month-to-month basis. The tenant still resides in the rental unit, which is a 5 bedroom house. Rent in the amount of \$2,100.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$1,050.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided by the tenant.

The tenant viewed the rental unit on June 1, 2015 while previous tenants were still resident there, and told the landlord that he would not be moving in until June 29, 2015, and the landlord said the unit would be cleaned.

The tenant further testified that no move-in condition inspection report was completed by the parties, but the tenant pointed out things that needed to be fixed and the landlord wrote something on a paper in the landlord's native language.

The previous tenants had been living in the rental unit for 5 or 6 years and left holes in walls, liquid splashed and running down walls, mold and mildew on the windows. The tenant had to take out a drop ceiling which was riddled with rat feces, and a photograph has been provided. The carpet was stained, only part of fridge was clean, cupboards and shelves were covered with grease; the back stairs are rotten and not attached to house; and all rooms needed paint. On the move-in date the tenant sent an email asking when the landlord was going to clean it, and believed the smell was from previous pets, but noticed rat feces and then found a rat trap and poison. The tenant explained to the landlord that he needed to hire a professional cleaning service, but found the rats had been living in the ceiling.

The tenant further testified that the landlord is a home inspector, but doesn't want to fix anything. The landlord gave the tenant \$800.00 toward repairs and cleaning, but the tenant explained it was not enough to clean and repair and the tenant didn't have the time.. The tenant completely stripped, sanded, painted and cleaned starting at the bottom and did 4 out of 5 bedrooms. The landlord kept saying, "You fix it," until the tenant found the rat problem and told the landlord that he had to take care of it.

The landlord gave the tenant another \$200.00 to repair the drop ceiling. The tenant took the old ceiling out, and then the landlord expected the tenant to use that money to fix the stairs. The tenant cleaned carpets, windows, appliances, and spent 8 hours to just clean the kitchen. The cupboards were full of grease which had to be scraped off, the downstairs bathroom was beyond disgusting, and the tenant washed all floors. The \$800.00 that the landlord gave the tenant went into cleaning, mudding, sanding and painting. The tenant has also spent another 40 hours cleaning, pruning, and other yard work, having to remove blackberries from beside the shed where the rats are.

The tenant testified that the receipts provided for this hearing for cleaning and painting amount to about \$500.00. Rat cleaner was \$60.00 and the tenant testified that he can't

breathe due to the rat feces. The tenant obtained a filter for the vacuum for that. The landlord replaced the carpet in one room only.

Cable was supposed to be included in the rent, but it was not connected. The tenant's girlfriend hooked it up in her name which costs about \$100.00 per month. Hydro is also included, and sometime in August, 2015 BC Hydro cut it off stating that the landlord didn't pay the bill. The tenant had to sign up for it and pay for it, and when the tenant talked to the landlord, the landlord asked that if the tenant wasn't supposed to pay for it, why did he. It has cost the tenant between \$140.00 and \$150.00, but no bills have been provided.

The tenant also testified that the landlord shows up at the rental unit without notice, and sent an Addendum letter to the tenant saying that if the tenant didn't sign it, the landlord would evict the tenant. The landlord sent the tenant a 1 Month Notice to End Tenancy by email along with the Addendum to relinquish the landlord's responsibility to pay for hydro and gas. The notice was the landlord's effort to encourage the tenant to sign the Addendum or move out. The landlord did that a few times.

The tenant has also provided digital photographs and videos which show a very un-maintained home. The tenant has not yet finished cleaning the whole house, but claims \$800.00 for cleaning in addition to the \$1,000.00 that the landlord has paid the tenant for cleaning and repairs. The tenant also claims \$1,400.00 for his time re-painting the 4 bedrooms. The tenant's claim is based on a quote received from a painter, which has been provided.

The tenant claims a rent reduction of 1/5<sup>th</sup> for a 4 bedroom unit as opposed to a 5 bedroom unit due to the affected area, retroactive to the beginning of the tenancy. The tenant also seeks an order that the landlord replace the panel door on the panel fuse box; replace the back stairs; repair holes in the living room walls and master bedroom and re-paint both rooms; replace the window latch in the master bedroom; replace the drop ceiling in the downstairs bedroom; replace the 3 walls in the den portion downstairs and the entire ceiling. The tenant also seeks an order that the landlord hire a professional move-out cleaning company to do a proper cleaning job, to include windows. The tenant also wants the landlord to pay for the utilities as per the tenancy agreement, being hydro, gas and cable.

**The landlord** testified that prior to moving in, when the tenant viewed the rental unit, the landlord wasn't aware that he was required to complete the move-in form. The tenant mentioned a few things, and the landlord wrote them down. Some major repairs were made prior to this tenancy, such as replacing the roof and the basement laundry room floor in July, 2014 and some carpet in May, 2015. Some rooms have recently been repainted, and the entire house about 10 years ago.

The tenant agreed to do some minor repairs, including touch-up painting and cleaning for \$800.00. After a few weeks the tenant complained that the ceiling tiles were contaminated with rat feces and smelled bad. The landlord offered the tenant \$200.00 to replace the tiles and repair the outside stairs. The landlord disagrees that he always wanted the tenant to take care of things; the landlord offered the tenant money. The tenant used the money for stuff that wasn't agreed to.

With respect to the smell, the landlord contacted several contractors about the repair, but the tenant didn't agree to what the contractor was going to do which caused delay and an increase in the quotes. It's an old house.

The landlord issued a notice to end the tenancy due to on-going disagreements and arguments with the tenant. The landlord only visited once without notice because the tenant refused to communicate, so it was an opportunity for the tenant to break the lease.

The landlord is prepared to do whatever is necessary to finish cleaning and remove the smell of rats, making sure that it is in livable condition, by replacing the rat infested drywall in the corner and a new ceiling. However, it won't be in a condition of a new house. The landlord is not ignoring the problem, but is trying to do repairs within the proper scope of work. One month prior to the tenancy, the ceiling and carpet were changed and the tenant still complained. The tenant is requesting a whole new room which is outside the issues and unreasonable. The pest control person said it was not necessary to take out all drywall and the stairs on the side, but said that to remove the smell the landlord should deodorize the room. However, the landlord is prepared to put in new drywall at the affected area of the room. The landlord further testified that the tenant continues to make requests in order to provide space for roommates that the landlord has not agreed to. The tenant had told the landlord that he was single and would be living with his girlfriend.

The landlord also testified that he made a mistake in the tenancy agreement, using a template from the previous tenant, but did not intend that cable or hydro would be included. The tenancy agreement shows that the utilities are included, but was only meant to have it available, but the tenant should pay for it. A month after the tenancy began the landlord tried to discuss it with the tenant by sending text messages, emails and registered mail, but the tenant refused to talk amicably.

### Analysis

Firstly, with respect to repairs and emergency repairs, the parties agree that the odor of rat feces has infested a certain area of the rental unit. The landlord agrees to put in

new drywall at the affected area of the room and a new ceiling but not in a condition of a new house. The *Residential Tenancy Act* states that:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Also:

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I must also consider the fact that the rental amount is \$2,100.00 per month and there are no rental arrears, meaning that the landlord has already collected \$10,500.00 from the tenant in addition to the security deposit. I have reviewed the photographs and videos provided by the tenant and I find that this rental unit is far from being maintained to safety and housing standards required by law or that it is suitable for occupation by a tenant. The photographs show a disgustingly dirty rental unit and the videos illustrate dead rats. The landlord testified that the tenant used the money that the landlord gave him for work that wasn't agreed to, but I agree with the tenant that the work the tenant did covered the money the landlord gave him and it's still far from complete. The tenant is concerned that the landlord will not hire professionals or do a good job, and I find the tenant has a valid concern considering that the landlord has, instead of making the rental unit suitable, asked the tenant to do it.

I hereby order the landlord to:

- replace the panel door on the panel fuse box;
- replace the back stairs;
- repair holes in the living room walls and master bedroom and re-paint both rooms;
- replace the window latch in the master bedroom;
- replace the drop ceiling in the downstairs bedroom;
- replace the 3 gyprock walls in the den portion downstairs and the entire ceiling;
- repaint the downstairs den portion; and
- hire a professional move-out cleaning company to do a proper cleaning job including windows.

With respect to the tenant's claim of \$800.00 for cleaning and outdoor work, considering the amount of money the landlord has already paid the tenant and considering my order above that the landlord hire a professional move-out cleaning company, I find that it would be double jeopardy to make such an order.

The landlord also testified that the landlord is trying to do repairs within the proper scope of work but the tenant continues to make requests in order to provide space for roommates that the landlord has not agreed to. The *Act* requires a tenant to seek permission from the landlord to sublet and the landlord must not unreasonably withhold consent. Therefore, if the tenant sublets without the landlord's consent, the landlord may take steps he deems necessary.

With respect to changing the locks to the rental unit, I am not satisfied that the landlord has entered the rental unit without giving the proper notice, and I dismiss that portion of the tenant's application.

With respect to the tenant's application suspending or setting conditions on the landlord's right to enter the rental unit, there is no evidence before me to support such a claim, except that the landlord must ensure that the tenant is given the proper notice for contractors or the landlord to make the repairs ordered. That notice is to be in writing, must be received by the tenant no less than 24 hours before entry and the notice must state the date, time and reason for entry, which must be reasonable.

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and the tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or law, I have reviewed the tenancy agreement and it is clear that included in the rent are water, electricity, heat and cablevision. I am not satisfied that the tenant would have rented the unit for \$2,100.00 per month if such utilities were not included. The landlord's testimony that they were available is not good enough. The parties have an agreement,

and the landlord is responsible for those utilities. The tenant has not provided a copy of the hydro bill to support the \$71.09 claim, so I dismiss that portion of the tenant's claim, however, I order the landlord to change the utilities into the landlord's name and pay the bills, and pay the bills given to the landlord by the tenant.

With respect to the tenant's claim for monetary compensation, I am satisfied from the evidentiary material and the testimony of the parties that the tenant was paid \$1,000.00 by the landlord for completing work that the landlord was responsible for, but much more work is needed. I find that the tenant has established a claim for an additional \$1,400.00 for painting.

With respect to the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided, the parties agree that the odor of rat feces is a big problem, and the tenant testified that that portion of the room cannot be used, and I accept that. The landlord promised the tenant a clean rental unit but did not provide that. The tenant seeks 1/5 of a rent reduction, and in the circumstances I find that is very reasonable considering the photographic evidence. I grant a monetary order in favour of the tenant in the amount of \$2,100.00, being 1/5 of the rent paid from July 1, 2015 to November 30, 2015. ( $\$2,100 / 5 = \$420.00 \times 5 \text{ months} = \$2,100.00$ ). I also order that rent be reduced by \$420.00 per month until the work specified above is completed.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby order the landlord to make the following repairs to the rental unit by January 31, 2016:

- replace the panel door on the panel fuse box;
- replace the back stairs;
- repair holes in the living room walls and master bedroom and re-paint both rooms;
- replace the window latch in the master bedroom;
- replace the drop ceiling in the downstairs bedroom;
- replace the 3 gyprock walls in the den portion downstairs and the entire ceiling;
- repaint the downstairs den portion; and
- hire a professional move-out cleaning company to do a proper cleaning job including windows.

If the landlord fails to complete the above repairs by January 31, 2016 the tenant will be at liberty to apply for further relief.

The tenant's application for an order permitting the tenant to change the locks to the rental unit is hereby dismissed.

The tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed.

I hereby order the landlord to comply with the *Residential Tenancy Act* by providing written notice to the tenant to complete repairs or enter the rental unit for any reason, as set out in Section 29 above.

I hereby order the landlord to comply with the tenancy agreement by paying for the utilities (gas, hydro and cablevision), by putting the utilities in the landlord's name and paying the bills, and by reimbursing the tenant for payment of such utilities upon receiving a copy of the bills from the tenant.

I further order that the tenant be permitted to reduce rent by the sum of \$420.00 per month until all repairs are made, commencing December 1, 2015.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,550.00 (\$2,100.00 + \$1,400.00 + \$50.00 = \$3,550.00). This amount may be deducted from future rent payable or may otherwise be recovered.

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 26, 2015

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Residential Tenancy Branch

