



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0896572 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, MNDC, OLC, RP, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and for an order authorizing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being personally served with the Tenant's Application for Dispute Resolution and notice of this hearing on October 7, 2015, no one for the named landlord or the landlord company attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the tenant. The tenant testified under affirmation that the named landlord was served on that date and in that manner, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the tenant testified that the application seeking more time to dispute a notice to end the tenancy is an error and is withdrawn because such an order is not required. The tenant was served with the notice on October 2, 2015, it is dated October 2, 2015, and the tenant filed the application for dispute resolution on October 6, 2015.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the notice to end the tenancy given by the landlord be cancelled?

- 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?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should the landlord be ordered to make repairs to the unit, site or property?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this 3-month fixed-term tenancy began on September 1, 2013 and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$768.00 per month is payable on the 1st 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 \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a bachelor suite type of apartment in an old hotel that has been converted to residential rentals.

The tenant further testified that he attended a dispute resolution hearing on August 5, 2015 concerning the tenant's application with respect to bed-bugs that the landlord refused to do anything about, as well as for lack of Wi-Fi and a dysfunctional air conditioner. The landlord didn't attend the hearing and the Arbitrator granted a monetary order in favour of the tenant in the amount of \$750.00, which was the amount of the monthly rent at that time, and ordered the landlord to rectify the bed bug problem, repair the air conditioner and provide Wi-Fi, or the tenant was to reduce rent by the amount of the cost if the tenant had to get Wi-Fi himself. A copy of the Decision has been provided. The landlord didn't fix the air conditioner or provide Wi-Fi. The tenant got the Wi-Fi himself which cost \$65.00 per month, however the tenant claims \$58.00 per month by way of rent reduction, because that is the minimum charge and the tenant's internet package is more than the minimum service.

The landlord retained the services of an exterminator to deal with the bed bugs and the exterminator told the landlord that the tenant's bed had to be replaced due to the infestation. The tenant had a king size bed, which the landlord had removed, and replaced it with a twin bed. The landlord left the king size frame in the rental unit and put the twin bed on the king size frame. Photographs have been provided. The tenant is a big man, about 265 pounds and has had 3 spinal surgeries. The bed is not big enough, the tenant does not fit on it properly, and it is not comfortable due to its small size. The tenant seeks an order that the landlord replace the bed with a king size bed.

The landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) on October 2, 2015, a copy of which has been provided. The notice is dated October 2, 2015 and contains an effective date of vacancy of October 12, 2015 for unpaid rent in the amount of \$58.00 that was due on October 1, 2015. The tenant testified that the

\$58.00 is the amount the tenant deducted as a result of the Decision of the director made on August 5, 2015, and the tenant gave the landlord a note in writing that he would be making that deduction. A copy of the note has also been provided. The tenant seeks to have the notice cancelled. The tenant also paid rent in the amount of \$710.00 for the month of December, 2015 which includes the \$58.00 rent reduction for the Wi-Fi and a rental increase that came into effect on December 1, 2015 increasing the rent from \$750.00 per month to \$768.00 per month.

The tenant claims reduced rent by \$58.00 per month, to \$710.00 per month for having to pay for Wi-Fi himself and an order reflecting that to prevent further notices being served by the landlord; a proper king size bed and \$600.00 for damages as a result of the landlord's failure to comply with the Decision of the director to repair the air conditioning, the discomfort of sleeping on the twin bed, improper or lack of sleep and stress of not knowing if the tenant will have to move. The air conditioning is not an issue presently because of the colder weather.

Analysis

Where a tenant disputes a notice to end the tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. In this case, I find it very convenient for the landlords to issue such notices and fail to attend any hearings with respect to the tenancy. The landlords didn't attend the August 5, 2015, 2015 hearing and haven't attended this hearing, and have therefore failed to establish that the notice was issued in accordance with the *Act*. Therefore, I cancel it and the tenancy continues.

I have read the Decision resulting from the August 5, 2015 hearing which clearly orders the landlords to provide adequate wireless internet service and repair the air conditioning by the end of August, 2015. However, the Decision does not specify as the tenant testified at this hearing that the tenant was permitted to reduce rent by the amount of the cost of internet service if the tenant had to have the service installed himself. The Decision states that if not completed by the landlords, the tenant is at liberty to apply for a continued rent reduction until the landlords provided it and had the air conditioning repaired. The Arbitrator also ordered that the landlords pay compensation to the tenant in the amount equivalent to one month's rent, or \$750.00, for lack of internet service and the landlords' failure to treat the rental unit for bed bugs.

I accept the undisputed testimony of the tenant that the rent was increased from \$750.00 per month to \$768.00 per month effective December 1, 2015; the tenant takes no issue with that.

I also accept the tenant's undisputed testimony that the Wi-Fi basic cost is \$58.00 per month, and I order that the \$768.00 per month rent be reduced by \$58.00 effective December 1, 2015. The tenant has already taken the liberty of paying that reduced amount for December, 2015. The landlords may collect rent in the amount of \$710.00 per month and may not increase it until December 1, 2016 unless otherwise ordered on application. I also find that the tenant is entitled to recovery of that amount from the landlords from the month following the date that the landlord

was ordered to provide such service, or from September through November, 2015, and the tenant is entitled to compensation in the amount of \$174.00.

The tenant seeks compensation in the amount of \$600.00 for the landlords' failure to repair the air conditioner as ordered, for aggravated damages for lack of an adequate bed and lack of adequate sleep, and stress caused by the landlords' failure to comply with the previous order and for the issuance of the notice. I also find that the landlords have failed to complete the repairs to the air conditioner, have removed the tenant's bed, have failed to have wireless internet included in the rent, and have failed to comply with the orders from the previous arbitration. I am also satisfied that the tenant has suffered damages resulting from those failures, and the tenant's application for monetary compensation is justified. Having found that the landlords are indebted to the tenant the amount of \$174.00 for the cost of internet service, I find that the tenant is entitled to the balance of the \$600.00 claim, or \$426.00 for aggravated damages.

The landlords were told by the exterminator to remove the tenant's bed due to an infestation of bed bugs, and the landlords did so but replaced a king size bed with a twin bed and left the king size frame for the twin bed to sit on in the rental unit. I have reviewed the photographs and I find that to be a ludicrous solution on behalf of the landlords, especially considering that the rental unit is a bachelor suite. The landlords are responsible for damages resulting from the bed bug infestation, and considering the findings of the previous Arbitrator, that the bugs existed and the landlords were ordered to deal with it, and considering the testimony of the tenant in this hearing, I am satisfied that the tenant is entitled to a king size bed. I order the landlords to replace the king size bed with a new king size box spring and a new king size mattress prior to the end of December, 2015. If the landlords fail to do so, the tenant will be permitted to pay no rent for the month of January, 2016 in order to be compensated allowing the tenant to purchase a new adequate bed.

The tenant lead no evidence with respect to the application for an order that the landlords comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the application.

Conclusion

For the reasons set out above, the tenant's application for more time to dispute a notice to end the tenancy is hereby dismissed as withdrawn, and I find that the tenant has disputed the notice within the time required under the *Residential Tenancy Act*.

I hereby cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2015 and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00. This amount may be deducted from future rent payable or may otherwise be recovered.

The tenant's application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I further order the landlords to replace the tenant's bed with a new king size bed, not a previously used bed, to include the box spring and a mattress by the end of December, 2015. If the landlords fail to do so, the tenant will be at liberty to pay no rent for the month of January, 2016 in order to purchase an adequate bed.

I hereby order that rent be reduced effective December 1, 2015 to \$710.00 per month, and the landlords may not increase it prior to December 1, 2016 unless otherwise ordered on application.

These orders are final and binding and may be enforced.

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: December 10, 2015

Residential Tenancy Branch

