# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

MNSD, PSF, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to provide services or facilities, and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Tenant withdrew the application for an Order requiring the Landlord to provide services or facilities and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on November 30, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 08, 2016 the Landlord submitted 22 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant on January 08, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct address of the rental unit.

Preliminary Matter #2

The Tenant has applied for a monetary Order of $1,325.00. At the hearing the Tenant stated that this claim includes a rent refund from December of 2015 and $575.00 in compensation for the inconvenience of living in the rental unit after a flood.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that an applicant may amend an Application for Dispute Resolution if the proceeding has not yet commenced; that if the Application has not yet been served to the respondent the applicant must submit an amended copy of the Application to the Residential Tenancy Branch and serve the amended copy to the respondent; and that if the Application for Dispute Resolution has already been served to the respondent and the applicant is able to serve the amended copy to the applicant at least seven days before the dispute resolution hearing, the applicant will be permitted to file a revised Application for Dispute Resolution with the Residential Tenancy Branch.

In these circumstances the Tenant has not filed an amended Application for Dispute Resolution with the Residential Tenancy Branch.

In a document submitted with the Application for Dispute Resolution the Tenant declares that she is seeking a refund of rent paid for October, November, and December, which is $2,250.00. I find that this contradictory information does not serve as proper notice that the Tenant is actually seeking a monetary Order for $2,250.00. I therefore find that the Application for Dispute Resolution has not been amended and that the Tenant's application for a monetary Order remains at $1,325.00.

Issue(s) to be Decided:

Is the Tenant entitled to monetary compensation?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on October 01, 2015; the Tenant agreed to pay monthly rent of $750.00 by the first day of the month; and rent was paid for October, November, and December of 2015.

The Landlord and the Tenant agree that there was a flood in the rental unit on October 25, 2015, which was the result of a faulty hot water tank in a suite above the rental unit, which the Landlord does not own. The parties agreed that the Tenant immediately reported the flood to the Landlord; that the Landlord attended the rental unit shortly after the flood was reported; and that the Landlord was able to stop the flow of water into the rental unit.

The Landlord and the Tenant agree that a representative of a restoration company attended the rental unit on the day of the flood who determined there was water in the ceiling; that two dehumidifiers were placed in the rental unit and the Tenant was advised that they should be left running as much as possible, but she could shut them off they

were too loud; and that laminate floor in the dining room was removed and the area was covered with a tarp.

The Landlord and the Tenant agree that it was subsequently determined that there was asbestos in the rental unit and the Tenant was advised that she would have to vacate the rental unit for two or three days while the asbestos was being removed but that she could remain in the rental unit for the rest of the remediation.

The Landlord and the Tenant agree that repairs to the rental unit commenced on November 23, 2015.

The Landlord stated that he told the Tenant she could vacate the rental unit if she did not wish to live in the unit during the repairs, but he did not tell her that she could leave without giving proper notice.

The Landlord and the Tenant agree that the Tenant vacated the rental unit on November 22, 2015 and that the Tenant informed the Landlord of her intent to vacate the rental unit on November 22, 2015.

The Tenant stated that she vacated the rental unit because she did not wish to live with the inconvenience of the repairs, which she anticipated would be significant. She based this decision on her understanding that the top two feet of most of drywall around most of the walls needed to be replaced, with the exception of the walls in the bedroom and bathroom; all of the ceilings needed to be replaced, with the exception of the bedroom and bathroom; and all of the flooring needed to be replaced.

The Landlord stated that he understood the Tenant could live in the rental unit during the repairs. He stated that the ceiling needed to be replaced in most areas except the bathroom and bedroom; that the top two inches of most walls had to be replaced, except in the bathroom and bedroom; and only the flooring in the dining room was replaced.

The Landlord submitted an email from the representative of the restoration company, in which he declares that he informed the Tenant it would be inconvenient to remain in the rental unit during repairs but they would “do our best to keep it as liveable as possible” if there was no alternative. The Tenant stated that she did not think she could remain in the unit during the repairs as she is frequently home during business hours and it would be highly inconvenient to vacate during the day to facilitate repairs.

The Landlord and the Tenant agree that the Landlord told the Tenant she could live in his home while the asbestos was being removed, but there was no other offer to relocate her during the repairs. The Tenant declined the offer to live with the Landlord as she did not feel comfortable with that living arrangement.

The Landlord stated that the repairs took approximately three weeks to complete. He stated that the repairs would have been completed earlier if the Tenant had still been

living in the rental unit but since the unit was vacant he did not think there was a need to complete the repairs in a timelier manner.

The Tenant is seeking the return of her December rent of $750.00, which was paid directly to the Landlord by the Provincial Government.

The Tenant is also seeking compensation for the inconvenience of the flood. She stated that between October 25, 2015 and November 22, 2015 she had to live with plastic over her dining room floor; she had to live with noisy dehumidifiers running 24 hours a day, which caused her to dehydrate; she had no dining room light; and she had to store many of her personal belongings in the bedroom.

The Landlord stated that the Tenant did not have many personal belongings to be stored and that she could have turned off the dehumidifiers if they were bothering her.

Analysis:

Section 44(1)(d) of the *Residential Tenancy Act (Act*) stipulates that a tenancy ends when the tenant vacates or abandons the rental unit. On the basis of the undisputed evidence I find this tenancy ended on November 22, 2015, when the Tenant vacated the rental unit.

As the Tenant did not occupy the rental unit for any part of December of 2015, I find that the Landlord did not have the right to keep the rent that was paid for that month. I therefore find that the Landlord must return the $750.00 in rent that was paid for December of 2015.

I note that the Landlord has not filed an Application for Dispute Resolution seeking compensation for lost revenue and I am not, therefore, able to consider whether he is entitled to compensation because the Tenant did not give one month's notice to end the tenancy.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to

reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

I find that it was reasonable for the Tenant to vacate the rental unit between November 23, 2015 and November 30, 2015 to facilitate the removal of the asbestos and to facilitate the bulk of the repairs, which involved replacing the ceiling and a portion of the walls in all areas of the rental unit except the kitchen and bathroom.

My decision that it was reasonable for the Tenant to vacate the rental unit during the latter portion of November is based, in part, on the undisputed evidence that she was told she could not occupy the rental unit for two or three days to facilitate the removal of asbestos.

My decision that it was reasonable for the Tenant to vacate the rental unit during the latter portion of November is based, in part, on the undisputed evidence that the Tenant is frequently home during business hours. I find that it would be unreasonable to expect the Tenant to remain in the rental unit while ceilings/walls were being removed and replaced and I find it equally unreasonable for the Tenant to vacate the rental unit during business hours for the sole purpose of facilitating those repairs.

As I determined it was reasonable for the Tenant to vacate the rental unit between November 23, 2015 and November 30, 2015, I find that she is entitled to a rent refund for those eight days, at a per diem rate of $25.00, which equates to $200.00.

In adjudicating this matter I have placed no weight on the undisputed evidence that the Landlord told the Tenant she could live in his home while the asbestos was being removed. Although this was a generous gesture on the part of the Landlord the Tenant was well within her rights to decline that offer if she did not feel entirely comfortable with the living arrangement.

I also find that the Tenant is entitled to compensation for the inconvenience of living in the rental unit for the 28 days between October 25, 2015 and November 22, 2015. I find that being without a fully functional dining room and living with two dehumidifiers for a period of time reduced the value of the four room rental unit by 25%. I therefore find that she is entitled to compensation of $175.00 for those 28 days, which was calculated at 25% of the per diem rent of $25.00.

I have not granted the Tenant the full compensation she is seeking, in part, because I find that the property in her dining room could have been stored on the tarp in the dining room until the repairs began, giving that the flooding had stopped, and that the loss of the use of her rental unit was, therefore, limited to the dining room space.

Conclusion:

The Tenant has established a monetary claim of $1,125.00, which is comprised of a $750.00 refund of rent for December of 2015, a $200.00 rent refund for November of 2015, and $175.00 for the loss of quiet enjoyment of her rental unit between October 25, 2015 and November 22, 2015.

I grant the Tenant a monetary Order for $1,125.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 21, 2016

Residential Tenancy Branch