



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP RR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*"). While two tenants are named as applicants in this application, only one party is named as a tenant on the residential tenancy agreement. Therefore, this application pertains to one tenant ("Tenant N"). The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant's partner (referred to as "Tenant J") testified that she sent the tenant's Application for Dispute Resolution ("ADR") package to the landlords by registered mail to the address on the residential tenancy agreement on January 22, 2016. The tenant's partner became aware that their ADR package had not been received by the landlord and subsequently contacted the landlord to confirm his address. The tenant then re-sent the ADR package to the new address provided by the landlord and further materials by registered mail on February 17, 2016 to the landlord's new address. The landlord testified that he received the materials on or about February 17, 2015. He also confirmed that he had an opportunity to read and respond to those materials with his own submissions. Given that the tenant was not advised of their landlord's correct and updated contact information and given that the landlord has been able to make documentary and testimonial submissions in this matter, I find that the landlords were both sufficiently served for the purposes of this hearing in sufficient time for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss? Are the tenants entitled to an order requiring the landlord to comply with the *Act* and/or the residential tenancy agreement? Is the tenant entitled to an order to the landlord to make repairs to the rental unit or to an order to allow the tenant(s) to reduce rent for repairs not made to the rental unit? Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The parties agreed that this tenancy began on January 15, 2011 as a six month fixed term. After that term, the tenancy continued on a month to month basis with a rental amount of \$1400.00 payable on the 16th of each month. The tenant's partner, Tenant J testified that she and her daughter moved into the residence on or about April 2014 with the knowledge and permission of the landlords. Tenant N and his partner confirmed that they continue to reside in the rental unit and the landlord confirms that he continues to hold the tenant's \$700.00 security deposit paid by the tenant prior to the outset of the tenancy (January 8, 2011).

Tenant N applied for a monetary award seeking a reduction in rent of 1/3 per month for the months of September 2015 to the date of this decision. Both Tenant N and Tenant J testified that the family, including two children now living in the home have been subjected to the effects of a leak within the rental unit. The tenants submitted photographic evidence showing a small den where a hole in the ceiling was surrounded by mold. The photographic evidence reflected their growing efforts to address the problem. The photographs include; black and white photographs of a hole in the ceiling, growing mold around it; a bucket on the floor; plastic over a child's crib; plastic over the ceiling.

The tenant submitted text correspondence with the landlord. The landlord also submitted copies of the same text correspondence. The correspondence includes the following;

DATES	COMMUNICATION
September 13, 2015	Tenant Notification by text to landlord: soft wet spot on ceiling
September 14, 2015	Tenant Advised by landlord that building manager will investigate

September 14, 2015	Tenant Notifies Landlord that building manager did not attend and they have health concerns (regarding their daughter)
September 18, 2015	Tenant Advised by landlord that building manager will investigate (again)
September 18, 2015	Tenant Advised by landlord that building manager will send a roof technician
October 15, 2015	Tenant Advised by Landlord that the property manager told him to "hold off" on work pending council approval
December 11-18, 2015	Tenant notifies Landlord that they are using bucket to catch water from the ceiling leak
December 14, 2015	Landlord indicates to the tenant that he is trying to contact building manager
December 15 - 17, 2015	Attempts by both parties to arrange to have building manager attend the residence
December 23, 2015	Discuss of an appropriate amount to agree on for rent reduction
January 1-29, 2016	Tenant seeks update from landlord regarding repairs
January 29, 2016	Tenant Advised by landlord that building manager will be fixing in next week

Tenant N and Tenant J both testified that no repairs have been done as of the date of this hearing. Tenant J testified that each person who has come to evaluate the leak has been allowed entry and that she has been regularly in contact with the landlord to have this matter addressed since September 2015. The landlord testified that the Strata Corporation (the "Strata") is moving forward with repairs. He relied on an informal email dated February 9, 2016 from the Strata to the landlord that indicated repairs were forthcoming.

Tenant J also testified that, on the date of this hearing, a representative from the Strata and a representative from the city of Vancouver had attended to their rental unit to investigate the leak within the unit.

The landlord did not dispute that there was a leak within the unit and did not dispute that the tenants were entitled to some reduction on their rent with respect to this issue. The landlord submitted that this matter had been addressed in that he had discussed a potential rent reduction with the tenant, agreed to a "reduction" by cancelling a scheduled rental increase. The landlord testified that, due to the tenant's situation, he declined to increase the rent (\$35.00 per month) as had been previously discussed

between the two parties. The landlord pointed to documentary materials (copies of email money transfers) showing rental amounts from the tenant as follows;

- \$1248.80 December 24, 2015
- \$1349.60 January 18, 2016
- \$1352.10 February 1, 2016.

Tenant N could not explain the nature of the deductions on these rental payments to the landlord or the calculations he used to reach different amounts each month. Ultimately, the landlord accepted these amounts and stated at this hearing that these reductions satisfy his obligation with respect to this matter.

The landlord also submits that he is limited in the steps that he can take as this is a “Strata-owned building”. He testified that he has been advised that approximately eight of the twenty units within the residential premises require work for leaks. He testified that he has been told by Strata that the tenant’s unit will be prepared but indicated he had nothing in writing to confirm this promise of work and no date to provide to the tenant as a timeline of work to come.

Analysis

Section 32 of the *Act* provides the landlord and tenant obligations to repair and maintain the rental unit. The landlord’s obligations are as follows;

- 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.

I find that the tenant has provided sufficient evidence, mostly undisputed by the landlord, that the den area of the home, used as a small child’s room, is not fully suitable for occupation. Furthermore, the tenant has shown that both Tenant N and Tenant J have made multiple requests for the landlord to make repairs to the den ceiling, identifying a potential health issue. The issue has remained unresolved for approximately seven months. The landlord has acknowledged the problem and acknowledged that one consequence of this leak is the loss of use of that full den space. The landlord has, according to his undisputed testimony, felt unable to move forward with repairs due to strata council restraints on his own.

Residential Tenancy Policy Guideline No. 21 addresses repairs related to Strata Corporation owned properties including;

...In a strata development, individual owners own their units, called strata lots, but they jointly own the common areas outside their lots. Where the rental unit is a strata lot, situations may arise where repairs are needed to the strata lot, but the source of the problem lies in the common areas of the development which are administered by the strata corporation...

The *Strata Property Act* sets out the duties of the strata corporation and the owners in respect of the property. Section 72(1) requires a strata corporation to “repair and maintain common property and common assets”. Section 72(2) permits a strata corporation, by by-law, to make an owner responsible for the repair and maintenance of limited common property that the owner has a right to use.

Where repairs are required because of a defect originating in the common area, an order that the necessary repairs be done will not be made against a landlord who is the owner or lessor of a strata lot as the owner or lessor has no authority to make the repairs. The owner or lessor is required to ensure that the strata corporation is aware of the problem and take reasonable steps to ensure that the repair is made in a timely manner.

Generally, repairs to the interior of the strata lot are the responsibility of the owner or lessor. Where the strata corporation may be liable for the cost of the repair, the landlord may make a claim against the strata corporation in the appropriate forum....

...Even though the defect may originate outside of the strata lot, if the tenant’s use and enjoyment of the premises is adversely affected by a problem originating in the common areas, the tenant may be awarded an abatement of rent or damages.

Any loss of use of a part of the property, services or facilities as originally provided within the residential tenancy agreement may, under section 27 and 32 of the *Act*, may result in a rent reduction that is equivalent to the reduction in the value of the tenancy agreement resulting from any loss of use or restriction to use.

I find that the landlord submitted evidence to support his claim that this repair is the responsibility of the Strata. Therefore, as per the policy guideline provided above, his obligation is to ensure that the Strata are aware of the tenant's problem and he must take any and all reasonable steps to ensure that the repair is made in a timely manner. The testimony and evidence shows that this repair has been outstanding for seven months as of the date of this decision. According to the landlord's evidentiary submissions, he sent approximately three emails to the Strata on behalf of his tenant during the period of seven months. Given the acknowledgement of a leak within the rental unit and the need for repair of that leak by the landlord, I do not find that his three emails reflect sufficient efforts on behalf of the landlord to address the leak within the rental unit. I do not find that the landlord has provided sufficient evidence to support the proposition that he has taken all steps available to him to ensure this leak repair is done in a timely manner.

As I find that the landlord has not met his obligations with respect to this required repair, I find that the tenants are entitled to a rent reduction for their loss of use of their den. The landlord suggested, in correspondence to the tenants that a rent reduction of approximately 1/25 of the rent was appropriate to reflect the square footage of the den space lost as a result of this leak. The tenant's evidence, both in testimony and in photographic evidence is that the den space in question represented one of three bedrooms within the residential premises. Therefore, the tenant suggested that 1/3 of the rent should be deducted as a result of this leak.

The advertisement for this unit shows that the rental unit had 3 bedrooms, including the den space as well as other common living areas: living room, kitchen, 2 bathrooms and a nook. Based on the rental amount of \$1400.00 per month and the knowledge of both parties that the den space was to be used as 1 occupant's bedroom, I find that the tenants are entitled to a monthly rent reduction of \$140.00 (10% of the rent) for the period of September 15, 2015 to December 15, 2015 for a total of \$420.00.

The evidence shows that, as of December 15, 2015, minimal action had been taken by the landlord to ensure the Strata address this issue. At this point, the tenant and his partner raised health concerns and, again, requested action by the landlord. At this time, the tenant also offered to arrange and pay for the repairs to be reimbursed by the landlord. In all of these circumstances, I find that, from December 15, 2015 to February 15, 2016, the tenant is entitled to a rent reduction of 15% or \$210.00 per month for a total of \$420.00 for this period of time.

As of February 1, 2016, the landlord had been contacted at least nine times by the tenant and his partner with respect to this matter. Documents submitted by the landlord suggest that, as of February 15, 2016, the Strata had advised the landlord that they were in the process of getting quotes for repairs relating to this leak. However, both parties agree that, as of the date of this hearing, no repairs have been started within the tenant's unit nor do the repairs have a scheduled completion date. Therefore, I find that from February 15, 2016 to March 15, 2016, the tenant is entitled to a rent reduction of \$280.00 or 20% of the monthly rent.

As of the date of this hearing and subsequent decision, and until the date that repairs begin on the rental unit with respect to the leak, the tenant may continue to deduct rent by a further 5% each month. Therefore, as of March 15, 2016 to April 14, 2016 to the date that repairs begin on the rental unit, the tenant is entitled to a rent reduction of 25% of the monthly rent; and the following month (April 15, 2016 to May 14, 2016) 30%. The tenant may continue to reduce his rent by 5% on an ongoing monthly basis as of the date the rent is due (16th) each month until the repairs on the rental unit are completed.

Conclusion

I grant a monetary order in favour of the tenant in the amount of \$1120.00.

I order that, as long as the tenant continues to reside in the rental unit and until the water leak ceases and until the den ceiling within the rental unit, is repaired, the tenant is entitled to continue to deduct 5% of \$1400.00 rent per month from his rent. When the water leak ceases and the den ceiling is repaired, I order the tenant will return to his full monthly rental amount.

I caution both parties to ensure that they are meeting their obligations as tenant and landlord in compliance with the Act.

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: March 29, 2016

Residential Tenancy Branch