



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LARLYN MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR, RP, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed February 26, 2016, wherein she sought the following relief: a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an Order that the Landlord make repairs to the unit, site or property; an Order authorizing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and, to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matter

The Tenant submitted 14 pages of late evidence on April 5, 2016. The Landlord stated that this evidence had not been received.

The Tenant conceded that she did not provide these documents to the Landlord and stated that she did not understand that was necessary. She also stated that she was prepared to proceed with the hearing without her late filed evidence.

As this evidence had not been provided to the Landlord I decline to consider the Tenant's Evidence submitted on April 5, 2016.

Aside from the above, the parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Should the Landlord be ordered to make repairs to the unit, site or property?
3. Should the Tenant be authorized to reduce rent for repairs, services or facilities agreed upon but not provided?
4. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that she moved into the rental unit on June 24, 2015.

The Tenant submitted that in June when she first viewed the apartment she was not able to see its condition as the unit did not have any electricity. She said that when the electricity was connected she became aware of the condition of the rental unit and brought her concerns to the building manager, D.'s, attention. She stated that this conversation occurred shortly after she moved in and at this time she suggested that her rent be reduced due to the condition of the rental unit and common areas. She said that in response D. stated that it was "as good as it gets".

She said that she was new to British Columbia and was not familiar with renting in B.C. She stated that after her conversation with D. she wrote him a letter wherein she listed her concerns with the unit and common areas as well as asking for certain issues to be repaired/resolved. She said D. looked at this list and said "this is not important, everything is fine".

The Tenant confirmed that the monthly rent is \$1,700 and it is her position that the rental unit is not worth this amount due to the following deficiencies.

- The rental unit did not have shelves in the kitchen until three months after she moved in.
- She could not close her bedroom closet door because the closet rod was improperly hung such that her clothes stuck out two inches. She said that this was subsequently repaired.
- The apartment smells very musty.
- The Tenant was told the floors were hardwood when she first viewed the rental unit. She said they are in fact laminate and sink in places.
- The back door is in terrible condition.
- The rental unit has Silverfish including in the cabinet where she puts her dishes.
- The rental unit does not have a compost container such that the occupants have to throw all their compostable waste in the garbage.
- The door to her unit was changed, but there is a 10 mm gap which allows light into her rental unit.
- The entry to the rental building is insufficiently lit, and although there are two lights, they do not work. The Tenant stated she believes this is a safety issue.
- The entry to the back of the building is similarly insufficiently lit. The Tenant stated that although there are two lights which are placed at the second floor level, only one of them works.
- There is a shed placed by the back entry door and the Tenant says that because of its location she cannot see if a person, or an animal is hiding behind it. Again, she stressed this as a safety issue.
- Her rental unit faces the back of the building where other renters dispose of useless objects such as furniture, garbage, construction materials, work horses, tables, etc. none of which are cleared in a timely manner.
- The front door is difficult to open. The Tenant said that she has to put a key in the door and then pull on it. She says that if she has any items in her hand she can't do so.

- The laundry room has two washers and two dryers which is insufficient for the number of renters in the building. She confirmed there are 35 apartments. She also said that each time she washes she has to clean them as they are dirty.
- The mat outside the entry to the rental building is too small and is constantly wet
- The heating makes a crackling sound when in use which disrupts her sleep.
- The lights in the entrance hall contain mercury which is very bad for the residents' health. The Tenant stated that another renter cleaned up a broken light as she was concerned an animal might lick the mercury.
- The floor of the bathroom of the rental unit has to be cleaned every two days because it is not sealed tile. The Tenant said you walk on and you leave marks. The Tenant said she spoke to the agent who said he had the same problem.
- The sink continually clogs because of the dirt in the drains.
- The garbage bins are often open which results in unpleasant smells.

The Tenant said when she moved in she asked if the apartment was quiet. The Landlord told her that it was very quiet and that the building was mostly concrete therefore providing significant sound protection. She said that the worst part of her rental situation is that the rental unit is not quiet and she can hear the neighbours all the time.

On November 28, 2015 the Tenant also sent a formal letter to the Landlord with respect to her concerns. The contents of the letter coincide with the information set out above. Additionally she noted that apartments of a similar size are \$1,200.00 per month, rather than the \$1,700.00 being charged for the rental unit. The Tenant also noted that she had to live with tarping while the verandas were built, as well as replacement of the windows.

In the November 28, 2015 letter the Tenant also notes that she provided D. with a list of things to fix that weren't done, as well as sending a registered letter to the Landlord which was returned.

The Tenant sent a further letter on January 20, 2016 (also introduced in evidence) wherein she reiterate the concerns set out in the November 28, 2015 letter in addition to the following:

- The carpet in the elevator is stained and dirty.
- The elevator is so slow her move cost an additional \$100.00 in movers' time.
- The carpet in the common areas is very dirty and stained.
- The fences are twisted and falling apart.

In the January 20, 2016 letter the Tenant again asks that her rent be reduced in recognition of the condition of the rental unit and common areas.

The Tenant said that she was formally a gymnast and she hurt her leg. She said that because of her injury she cannot use the stairs. She said her companion also has problems with her knees such that the elevator is necessary. She said that the elevator is going to be out of service for 6-8 weeks and this is not acceptable.

At the within hearing, the Tenant confirmed she seeks a monthly reduction of \$300.00 per month for the time she has been in the rental unit. As she filed her application in February, on her application she sought \$2,400.00 representing eight months.

The Tenant also seeks an Order that the Landlord make the following repairs:

1. Fix the front door to ensure it does not have a gap.
2. Fix the sinks because they continue to send dirt.
3. Check the bathroom fan as it "throws things".
4. Paint the frames of the windows that were installed in February 2016.
5. Fix the floor.
6. Make repairs to the heating because of the sound and the smell.
7. Repair the dishwasher as the two short cycles are not working and the Tenant can only use the cycle for 1 hour 45 minutes.

8. Repair the front door lights for safety reasons.
9. Repair the lock on the front door and install a FOB for safety reasons.
10. Ensure periodic cleaning of the laundry room.
11. Ensure regular cleaning of the carpets and floors. During the hearing she stated that the floors were washed the day before the hearing on April 14, 2016 and the last time they were done was in December and then in January.
12. Clean the back door of the building which the Tenant described as a warehouse door which she said is covered in scrapes needs to be repaired.
13. Fix the stairs which she described as narrow and not usable and secure the hand rail.
14. Ensure regular removal of the garbage in the back of the building.
15. Provide green bins for compost disposal.
16. Repair the dishwasher as the two short cycles are not working and the Tenant can only use the long cycle which takes 1 hour and 45 minutes.

The Landlord's Senior Property Manager, G.P., testified that the rental unit has been completely renovated and the Tenant's claims that it is in poor condition are simply inaccurate. In response to the Tenant's specific complaints he testified as follows.

- There was one shelf missing above the dishwasher in her kitchen because it were on back order but was replaced within weeks of the tenancy beginning.
- The dishwasher problems have been reported and will be repaired as soon as possible.
- The gap in her door has been there since the building was built. She would have seen that when she moved in.
- Her unit has been treated for silverfish although he claimed they are "everywhere" and it is impossible to get rid of them for good. He stated that the Landlord was prepared to have the pest control people come again.

- The laundry room is supposed to be maintained every day, or every other day. He said that it is a small unit and heavily used. He stated that they could post a sign to recommend other renters wipe down the basin after each wash.
- The front door was painted.
- The lights at the front entry way are sufficient.
- The carpet cleaning was held off until the repairs were done and the Landlord wanted to clean when it was necessary.
- The Landlord is prepared to have the handyman come in and look at the sinks and the bathroom fans. He said that the frames of the windows are not meant to be painted and will not be painted.
- The flooring was previously carpet and they had to have the floors leveled with concrete. He said there are some issues with uneven surface but it is walkable.
- In terms of her complaint about the heating making noises and having a bad smell, he stated that they have had the handyman and a heating company look at her unit. The handyman sealed the area around the heating and confirmed that it is functioning properly. The Landlord further said he has no idea where the smell is coming from as the unit was completely renovated, flooring replaced and painted and there should be no reason for the smell.
- The Landlord stated he was prepared to have a repairman come and look at the Tenant's dishwasher.
- The Landlord confirmed he does not believe the front door, or back door lights require repair or replacement and that he believes there is sufficient lighting.
- The Landlord stated that they have no intention to install a FOB on the front door. He further stated that when they renovated the rental building, they redid the front door windows and lock.
- The Landlord stated that the laundry room is heavily used, and is regularly cleaned.

- The Landlord stated that they were waiting for the renovations to be done before having the carpets cleaned.
- The Landlord stated that the stair well is a structural issue and consistent with building codes at the time the building was built. He also stated that he did not notice the hand rail as being loose.
- In terms of the Tenant's claim that the garbage in the back needs to be removed regularly, the Landlord stated as follows. The Tenants unit overlooks the garbage bins. They renovated 20 units and it does pile up time to time. The Landlord also said when tenants move out they leave their unwanted items there and it does pile up. He stated that this year alone they have spent \$3,000.00 on junk removal. Finally, he said that this where the bins have always been and the Tenant knew this when she moved in.
- The Landlord testified that the compost bins are in the "works". The Landlord stated that they were supposed to be put on before January.
- The Landlord confirmed that the elevator repairs have not yet been finalized. He stated that it is not the case that the elevator will be inoperable as of May 1, 2016, but that when the repairs begin, the elevator will be inoperable. He further confirmed that there was no plan to compensation the occupants for loss of use of the elevator.

With respect to the Tenant's claim for a \$300.00 per month rent reduction, the Landlord stated that he did not believe it was appropriate. He said most of her claims are personal and what is acceptable to her, not to anyone else. The Landlord said that if she came to D. in December he would have been able to work with her to let her out of her lease.

The Landlord further stated said he has not had a single complaint from any other renter or a similar request from any other renter. He also stated that they have addressed the concerns she has previously raised. He also claimed that the "handyman" has been in the rental unit 86 times to fix things at the rental building since the renovations completed, and in her particular unit he has been in there five times.

Analysis

Section 32 of the *Residential Tenancy Act* provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (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.

Section 65(1)(b) of the *Residential Tenancy Act*, allows me to make an Order permitting the Tenant to reduce the amount of rent payable for the cost of repairs, or services or facilities from the rent. For greater clarity, this section reads as follows.

Director's orders: breach of Act, regulations or tenancy agreement

- 65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
- (a) that a tenant must pay rent to the director, who must hold the rent in trust or pay it out, as directed by the director, for the costs of complying with this Act, the regulations or a tenancy agreement in relation to maintenance or repairs or services or facilities;
 - (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
 - (c) that any money paid by a tenant to a landlord must be
 - (i) repaid to the tenant,
 - (ii) deducted from rent, or
 - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

(d) that any money owing by a tenant or a landlord to the other must be paid;

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

(g) that a tenancy agreement may be assigned or a rental unit may be sublet if the landlord's consent has been unreasonably withheld contrary to section 34 (2) *[assignment and subletting]*.

(2) The director, in accordance with the regulations, must recover from a trust referred to in subsection (1) (a) the costs incurred in carrying out the order referred to in that subsection.

(3) When the purposes of an order referred to in subsection (1) (a) have been accomplished, the director must pay to the landlord, in accordance with the regulations, any amount of rent remaining in the trust, together with interest if interest is payable under the regulations.

After careful consideration of the evidence before me, I find that the Landlord has failed to maintain the common areas in a manner which complies with section 32 of the *Act* and the *Residential Tenancy Policy Guideline 1*.

The photos submitted by the Tenant depict dirty carpets, walls, and doors in the common areas and elevator which suggest periodic cleaning is not being done. The Landlord stated that the floor cleaning was left to be done after the renovations were completed. While this may have been an attempt to save cost, it is not acceptable for a Landlord to leave such common areas in an unclean state. Tenants have a reasonable expectation that a Landlord will ensure regular cleaning of common areas.

The Landlord stated that the exterior lighting at the entry doors was sufficient, yet photos submitted by the Tenant confirm those lights were not working. I agree with the Tenant that this is a safety issue.

The Landlord also stated that he was not aware the staircase hand railing was loose. Again, this is a safety issue and it is incumbent on the Landlord to ensure the railing is properly secured.

I accept the Tenant's evidence that she was not able to properly assess the rental unit as it was without power when it was first viewed.

I further find that the Tenant brought her concerns to the Landlord's attention on numerous occasions. The evidence confirms that she has done so in conversation

immediately after moving into the rental unit, as well as written correspondence (the latter of which was provided in evidence). While some of her concerns can be characterized as reflective of her personal standards of cleanliness, I find that some of the concerns indicate a failure to maintain the rental building to an acceptable standard.

In consideration of the above, I permit the Tenant, pursuant to section 65 of the *Act*, to reduce her rent by \$100.00 per month. As the tenancy began on June 24, 2015, she is to be credited \$1,100.00 representing the \$100.00 reduction for the eleven months from July 2015 to May 2016.

Having been substantially successful, she is also awarded her filing fee of \$100.00.

Accordingly, I authorize the Tenant to reduce her next month's rent by \$1,200.00. Her ongoing rent will be \$1,600.00 per month until the tenancy ends. Accordingly, her June 2016 rent will be \$400.00.

The evidence was not clear as to when the elevator repairs would commence. Should the elevator be inoperable at any time during the tenancy, the Tenant is at liberty to apply for a further reduction in her rent.

Section 32 of the *Residential Tenancy Act* allows me to order a Landlord to make repairs to the rental unit. In consideration of the evidence filed, I Order as follows.

By no later than May 31, 2016, the Landlord shall:

1. Have the resident "handyman" assess whether weather stripping or some other material may be used to reduce the gap in the Tenant's front door.
2. Have a plumber inspect the sinks in the rental unit to address the debris issues reported by the Tenant.
3. Have the bathroom fan inspected to ascertain the source of the debris which is thrown when the fan is in use.
4. Have the dishwasher in the rental unit repairs to ensure the Tenant can use more energy efficient cycles.
5. Repair the front door lights and ensure adequate power to the lights for safety reasons.

6. Repair the lock on the front door and install a FOB for safety reasons.
7. Ensure biweekly cleaning of the laundry room.
8. Ensure monthly cleaning of the carpets and weekly cleaning of the floors in the common areas.
9. Secure the handrail in the stairs.
10. Ensure weekly removal of the garbage in the back of the building.
11. Provide green bins for compost disposal.

Should the Landlord fail to comply with the above, the Tenant may make a further application for a rent reduction pursuant to section 65 of the *Residential Tenancy Act*.

I decline to make an order that the Landlord fix the floor as I accept the Landlord's evidence that they made their best efforts to level the flooring when the rental building was renovated and the laminate flooring installed.

I also decline the Tenant's request that I make an order that the Landlord repair the heating. I accept the Landlord's evidence that the heating system has been inspected and was determined to be in working order.

The Tenant requested an order that the back door of the building be repaired she described it as being covered in scrapes. Photos submitted by the Tenant confirm the door is scraped, however, I find this to be normal wear and tear of a regularly used common door and I decline to make any order in this regard.

Similarly, I decline to order the Landlord to move the shed which is placed in the back area.

Conclusion

Pursuant to section 65 of the *Act*, the Tenant's rent is to be reduced by \$100.00 per month such that she is to be credited the sum of \$1,100.00. She is also awarded recovery of the \$100.00 filing fee. She is permitted to reduce her next month's rent (June 2016) by the total sum of **\$1,200.00** such that the rent due for June 2016 is **\$400.00**.

The Landlord is also ordered, pursuant to section 32, to make repairs to the rental unit as set out in this my Decision. Should the Landlord fail to do so, the Tenant may make an application for a further rent reduction.

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: May 13, 2016

Residential Tenancy Branch