



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, PR, LRE

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A Repair order.
- b. A monetary order in the sum of \$6000
- c. An order that the landlord comply with the Act, regulations or tenancy agreement
- d. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord carries on business. :

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for repairs?
- b. Whether the tenant is entitled to a monetary order?
- c. Whether the tenant is entitled to an order for the reduction of past or future rent and if so how much?
- d. Whether the tenant is entitled to An order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. Whether the tenant is entitled to an order An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided

Background and Evidence

The tenancy began on May 1, 2015 when the parties entered into a one year fixed term tenancy agreement which became month to month after the expiry of the fixed term. The monthly rent is \$850 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$425 on April 11, 2015.

The landlord testified the rental property has been sold and the new owners will be taking possession on May 10, 2016.

There have been two previous arbitrations. The decision dated October 13, 2015 dealt with a consent order:

I was assigned the matter that was heard on December 14, 2015. After carefully considering all of the evidence I issued a repair order to be completed by January 7, 2016. All of the items in that repair order were completed with the exception that the landlord provided a stopper for the sink and not a plunger and that the landlord failed to paint the ceiling. The landlord acknowledged the failure to carry out these two items. He testified he was away on holidays and when he returned in got involved in other matters and forgot to complete these two items. In additions I made the following order: "All other claims raised in the tenant's application are dismissed without leave to re-apply."

Relevant Legal Principles:

The principle of res judicata provides that a matter which has already been conclusively decided by a court is conclusive between the parties. Final judgments prevent any re-examination or re-trial of the same dispute between the same parties. The Supreme Court of British Columbia in *Jonke v. Kessler*, Vernon Registry, Docket No. 3416 dated January 16, 1991 held that the principle of res judicata applies to residential tenancy arbitration. The policy reasons in favor of the principle are set out in a decision of Hardinge L.J.S.C., in *Bank of B.C. v. Singh* 17 B.C.L.R. (2d) 256 as follows:

"...While people must not be denied their day in court, litigation must come to an end. Thus litigants must bring their whole case to court and they are not entitled to relitigate the same issues over and over again. Nor are litigants entitled to argue issues that should have been before the court in a previous action..."

The principle of res judicata prevents a party from bringing to litigation not only a matter that was previously heard, but also a matter that should have been heard at that previous arbitration. Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamche v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated November 15, 1996, quoted with approval the following passage from the judgment of *Henderson v. Henderson*, (1843), 67 E.R. 313

“In trying this question I believe I state the rule of the court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Analysis

All of the evidence was carefully considered. With regard to each of the tenant's repair claims I find as follows:

- a. The landlord failed to paint the ceiling to the rental unit by January 7, 2016 as provided in the order dated December 14, 2016. The tenant is entitled to an order the ceiling be painted and I make such an order.
- b. Provide a plunger for the bathroom sink.
- c. I dismissed the tenant's claim for spraying for silverfish. The tenant testified she wants an order that the rental units of her neighbours be sprayed. Evidence was provided that the neighbours do not wish to happen. I am not prepared to make an order for the spraying of the building where the neighbours do not wish their units sprayed. The tenant failed to prove that silverfish continue to be a problem.
- d. I dismissed the tenant's claim for an order that the landlord employ a professional cleaner to clean the heaters. The heaters were cleaned by the landlord in compliance with the earlier order. The tenant failed to prove that a professional cleaner was needed.
- e. I determined the tenant was entitled to a repair order that the landlord fix the noise coming from the heater. However, I determined the tenant is not entitled to compensation for this claim as the tenant failed to communicate the problem to the landlord prior to filing the Application for Dispute Resolution.
- f. I ordered that the landlord paint the inside and outside of the kitchen cupboards.
- g. I ordered that the landlord power wash the balcony. The landlord agreed to this matter.
- h. I dismissed the claim that the landlord fix holes in the balcony door as the tenant failed to prove this was a problem.
- i. I dismissed the claim that the landlord clean underneath the stove burners and replace the drip pan. The tenant has been in the rental unit for over a year. The tenant failed to prove this claim. Further, it is barred by the principle of res judicata.

- j. I ordered that the landlord replace the oven light.
- k. I ordered that the landlord fix the refrigerator handle.
- l. I ordered that the landlord wash the outside of the bedroom window.
- m. I ordered that the landlord replace the clip to the window screen.
- n. I ordered that the landlord replace the battery for the smoke detector.

Repair Order

In summary I ordered that the landlord make the following repairs provided the tenant gives reasonable access:

- a. Paint the ceiling
- b. Provide a plunger for the bathroom sink.
- c. Fix the heater
- d. Paint the inside and outside of the kitchen cupboards
- e. Power wash the balcony
- f. Replace the oven light
- g. Wash the outside of the bedroom window
- h. Replace the clip to the window screen
- i. Replace the battery.
- j. Fix the refrigerator handle

I further order that the repairs be complete by May 22, 2016.

Monetary Order:

The tenant seeks compensation in the sum of \$6000 for the period May 1, 2015 to May 1, 2016 because the rental unit was not ready to move in. In the tenant's application which was heard on December 14, 2015 she claimed reimbursement of rent since May 1, 2015, refund for the toilet seat, release from the lease and a monetary order. In my decision dated December 14, 2015 I issued a repair order but dismissed all other claims without liberty to re-apply. The principle of res judicata does not permit a party to continue to litigate the same issues. I determined that all monetary claims to the date of the December 15, 2015 have been dismissed and cannot be brought..

Further, the tenant seeks compensation for a number of repair items. However, the tenant failed to communicate her repair concerns to landlord. In my view the tenant is not entitled to compensation where she has not requested the repair work be completed.

The tenant testified she is in her mid 50's and has a disability. With respect to each of the tenant's monetary claims I find as follows:

- a. The tenant is entitled to compensation in the sum of \$50 per month for the period of January 7 to the date of the hearing April 21, 2016 which I determined to be 3

- ½ months or the \$175. The landlord is obligated to paint the ceiling under the previous order provided the tenant gives his reasonable access. I determined this includes compensation for the failure to install a plunger.
- b. I dismissed the tenant's claim against the landlord for compensation because other tenants are smoking outside the rental property. The tenant failed to communicate this concern to the landlord and failed to identify which other tenants are breaching the no smoking policy. The landlord has not been negligent and is not liable in this situation.
 - c. I dismissed the claim for compensation for the failure to give 24 hour notice. The landlord has every right to knock on your door and request access. The tenant is not obliged to agree to give the landlord access. However, if the tenant allows the landlord into the rental property the landlord has not breached its obligations under the Act.
 - d. I dismissed the claim that the landlord misled the tenant prior to moving in as the tenant failed to present sufficient evidence to establish this claim. The tenant failed to prove that the landlord told the tenant that the building was 40 years old (when it was 60 years old) or that there was no problem with pests.
 - e. I dismissed the claim for compensation based on the tenant's testimony that the landlord forced her to sign the Condition Inspection Report when she moved into the rental unit. If there was a problem the tenant was free to make changes or send the landlord a letter identifying deficiencies.
 - f. I dismissed the claim for the refund of \$65 for the toilet seat. The tenant failed to prove that the seat that was previously in place was not in compliance with the Act, Regulations or tenancy agreement. This claim is barred by the principle of res judicata.
 - g. The tenant has been successful with respect to a repair order relating to a number of items. However, the tenant failed to communicate these problems prior to filing her application. The tenant is not entitled to compensation for these claims.

The Reduction of Rent

I dismissed the tenant's application for the reduction of future rent if the landlord fails to comply with the repair order. The requested repairs are not large. There is insufficient evidence that the landlord will fail to comply with this order. If the landlord fails to make the repairs as provided above the tenant has liberty to re-apply.

Application to Suspend or set Conditions on the Landlord's right to Enter:

I dismissed the tenant's claim to suspend or set conditions on the Landlord's right to enter and the tenant failed to present sufficient evidence that the landlord has abused his right to enter.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$175 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: May 4, 2016

Residential Tenancy Branch